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Situation of human rights in Myanmar

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraph 30 of General Assembly resolution 65/241 and covers the period from 26 August 2010 to 4 August 2011. During the reporting period, the remaining steps of the political road map led by the State Peace and Development Council were implemented, namely, the holding of general elections on 7 November 2010; the convening of the new Parliament in January 2011; and the transfer of power from the Council to the new Government on 30 March 2011. In the process, the Council was officially dissolved. On 13 November 2010, one week after the election, Daw Aung San Suu Kyi was released after seven years of house arrest.

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I. Introduction

1. The present report is submitted pursuant to paragraph 30 of General Assembly resolution 65/241, in which the Assembly requested the Secretary-General to continue to provide his good offices and pursue his discussions on the situation of human rights, the transition to democracy and the national reconciliation process with the Government and people of Myanmar; to offer technical assistance to the Government in that regard; and to report to the Assembly at its sixty-sixth session, as well as to the Human Rights Council, on the progress made in the implementation of the resolution. The report covers the period from 26 August 2010 to 4 August 2011. Separate reports by the Special Rapporteur on the situation of human rights in Myanmar were issued in September 2010 (A/65/368) and in March 2011 (A/HRC/16/59).

2. During the reporting period, the remaining steps of the political road map led by the State Peace and Development Council were implemented, namely, general elections were held on 7 November 2010; the new Parliament was convened in January 2011; and the Council transferred power to the new Government of Myanmar, headed by President Thein Sein, on 30 March 2011. In the process, the Council was officially dissolved and the Chair of the Council, Senior General Than Shwe, and Vice-Chair, Vice-Senior General Maung Aye, officially resigned from their formal positions of power. On 13 November 2010, one week after the election, Daw Aung San Suu Kyi was released after seven years of house arrest.

3. During the same period, I met with then-Prime Minister Thein Sein in Hanoi in October 2010, on the margins of the third ASEAN-United Nations summit, and with former Minister for Foreign Affairs Nyan Win in New York in September 2010, on the margins of the sixty-fifth session of the General Assembly. I also spoke directly with Daw Aung San Suu Kyi immediately following her release. My Special Adviser, Vijay Nambiar, visited Myanmar twice at the invitation of the Government, on 27 and 28 November 2010, following the election and release of Daw Aung San Suu Kyi, and from 11 to 13 May 2011, following the establishment of the new Government.

4. During the reporting period, I remained continuously engaged with interested Member States, including by convening three meetings of the Group of Friends of the Secretary-General on Myanmar, in September and December 2010 and in June 2011. In addition to consultations in capitals, my Special Adviser briefed the President of the General Assembly, the Group of Friends and the Security Council on each of his visits to Myanmar. With the establishment of the new Government, my good offices continued in the context of renewed high-level bilateral engagement between Myanmar and key international stakeholders.

II. Key developments

Elections

5. By September 2010, 42 political parties had been registered with the Union Election Commission to participate in the elections scheduled for 7 November 2010, including 5 out of 10 existing parties that contested the 1990 election. On 14 September 2010, the Commission declared 10 parties "null and void" in

accordance with election laws, including the National League for Democracy and four other existing parties, for not renewing their registration. The Commission issued canvassing guidelines for the remaining 37 parties.

6. Besides two establishment parties — the Union Solidarity and Development Party, headed by Prime Minister Thein Sein, and the National Unity Party — and two main opposition parties — the National Democratic Force and the Democratic Party — the majority of the parties were ethnic-denominated and represented a wide range of constituencies locally and nationally. Within the prescribed time frame, the organizational and financial capacity of the parties informed their canvassing strategies. Out of some 3,300 candidates, the Union Solidarity and Development Party and the National Unity Party fielded the largest number (1,100 and 990, respectively, across all constituencies), whereas other parties fielded much smaller numbers and only in some constituencies.

7. On 7 November, three elections were held simultaneously: for the People's Assembly (lower house) and the Nationalities Assembly (upper house) of the Union Assembly, and for 14 state and regional legislatures. As in 1990, the elections were organized on a first-past-the-post basis. By 17 November, the ballot count was officially published. By 7 December, the Commission announced that voter turnout was 77 per cent of Myanmar's 29 million eligible voters.

8. With 58 per cent of the total votes cast, the Union Solidarity and Development Party gained nearly 77 per cent (883 seats) of the total 1,154 elected seats in all assemblies, including 77 per cent (129 seats) in the Nationalities Assembly and 79 per cent (259 seats) in the People's Assembly. With 25 per cent of the seats in each assembly reserved for the military (*Tatmadaw*), the Union Solidarity and Development Party and the military bloc held an overwhelming majority. The remaining seats in the national legislatures were divided among 16 political parties and independents, including the National Unity Party, National Democratic Force, Shan Nationalities Democratic Party, Rakhine National Progressive Party, All Mon Region Democracy Party and Chin Progressive Party.

9. In the 14 state and regional legislatures, ethnic parties fared relatively better than national opposition parties. While the Union Solidarity and Development Party won almost all elected seats in most central regions, in ethnic areas the party won sizeable blocs but had a majority only in Kayah State, with ethnic parties winning up to 30 per cent of seats in Chin and Rakhine States.

10. According to independent reports, polling day was generally peaceful and orderly despite irregularities. Indications are that most voters were able to cast their ballot freely and the counting in polling stations was held in most cases in front of party representatives and members of the public. At the same time, however, there were numerous reports of infringements, intimidation and coercion throughout the process. That added to concerns about the restrictive electoral framework that effectively excluded key stakeholders from the process and limited fundamental freedoms of expression, assembly and association, in addition to unequal access to State resources, media restrictions, lack of voter education, and significant constraints on candidates and parties to contest on a level playing field.

11. Some of the most serious concerns revolved around abuse of the advance voting process that appears to have swung final results away from opposition candidates to the Union Solidarity and Development Party during the vote counting.

As a result, advance ballots are estimated to have represented up to 10 per cent of votes nationwide. While official sources claim that only 4 seats were affected, independent sources reported that advance votes may have changed the outcome for as many as 64 seats.

12. On 8 November, the Chair of ASEAN issued a statement welcoming the elections as a significant step forward in the implementation of Myanmar's road map towards democracy, encouraging Myanmar to accelerate the process of national reconciliation and democratization, and to continue to work with ASEAN and the United Nations in that process.

13. On the same day, I issued a statement noting that the election was held in conditions that were insufficiently inclusive, participatory and transparent, and stressed the responsibility of the Myanmar authorities to turn the election into a new start for a credible political transition by releasing political prisoners and lifting restrictions on Daw Aung San Suu Kyi. I also urged that the process of forming new institutions of government be broad-based and inclusive, and called for dialogue among all stakeholders in that regard. I stressed that the international community was looking for greater assurances that the process under way would mark a genuine departure from the status quo.

14. In June and July of 2011, several political parties announced their intention to field candidates for parliamentary by-elections scheduled for November 2011. The Group of Democratic Party Friends, including the National Democratic Force and Shan Nationalities Democratic Party, announced plans to field candidates for 40 constituencies, while the Union Solidarity and Development Party announced it would contest all 45 constituencies. During the same period, applications were submitted for the registration of new political parties. On 20 July, the Election Commission permitted the registration of the People's Democratic Party, bringing the total number of officially registered political parties to 38.

Release of Daw Aung San Suu Kyi

15. On 13 November 2010, Daw Aung San Suu Kyi was released from house arrest by executive order of the Chair of the State Peace and Development Council, Senior General Than Shwe. In a statement, I welcomed the release, noting that her dignity and courage in the face of injustice was an inspiration to many people around the world, and expressed deep regret that she had effectively been excluded from participating in the elections. I made clear that no further restrictions should be placed on her, and again urged the authorities to release all remaining political prisoners.

16. On 22 November, the Supreme Court in Nay Pyi Taw rejected an appeal lodged by the National League for Democracy against its dissolution pursuant to the announcement by the Election Commission.

Government formation

17. On 31 January, the first session of the Union Assembly was convened, bringing the 2008 Constitution into force. Former third-ranking member of the State Peace and Development Council, Shwe Mann, was elected as Speaker of the

People's Assembly, and former Minister for Culture, Khin Aung Myint, as Speaker of the Nationalities Assembly, in which position he also serves as Speaker of the Union Assembly. All speaker and deputy speaker positions went to the Union Solidarity and Development Party.

18. On 4 February, the Presidential Electoral College (comprising all members of the Union Assembly) elected former State Peace and Development Council Prime Minister, Thein Sein, as President, with former Council Secretary-1, Tin Aung Myint Oo, as first Vice-President, and prominent ethnic Shan figure, Mauk Kham, as second Vice-President. All three are elected representatives of the Union Solidarity and Development Party. Through a statement, I noted that the convening of Parliament and election of the Presidency represented an important opportunity for Myanmar to move away from the status quo.

19. On 30 March, the State Peace and Development Council was officially dissolved upon transferring power to the new Government. Senior General Than Shwe and Vice-Senior General Maung Aye officially retired from their formal positions. Through a statement, I took note of the transfer of power to the new Government, and stressed that the Myanmar authorities had an opportunity and an obligation to their people to demonstrate that this change would mark the beginning of a substantive and genuine move away from almost 50 years of direct military rule. I also urged the authorities to engage in a broadly inclusive dialogue on the necessary reforms for a credible and effective system of government.

20. Although nominally civilian, the new Government is dominated by recently retired military officers. Out of 30 ministers, there are 3 serving military officers appointed by the Commander-in-Chief to security portfolios; 10 ministers and 5 deputy ministers from the previous cabinet; 4 recently-retired senior military officers appointed to technical ministries; and 8 newly appointed technocrats, including 3 with a military background but also extensive experience in their portfolio, such as the Minister for Foreign Affairs, Wunna Maung Lwin.

21. New legislative and executive structures were also introduced in each of the seven regions and seven states. Within the states concerned, six self-administered areas were delineated for certain ethnic groups. All local chief ministers, appointed by the President, were from the Union Solidarity and Development Party, except in Kayin State, which is headed by a military legislator. Within local governments, ethnic opposition politicians were appointed to social and other portfolios. In June and July, local governments were reshuffled to realign ministerial portfolios at the central and local levels.

22. Changes within the military leadership included the new Commander-in-Chief, General Min Aung Hlaing. The abolition of army-controlled supra-ministerial policy committees and the introduction of local governments were among the changes reflecting a potential curtailment of the military's role in governance, consistent with the Constitution. The military is not directly represented on the Financial Commission, which sets the military budget, although the Commander-in-Chief reportedly controls a "special fund" without public oversight.

23. During their first session, held from 31 January to 30 March, both the upper and lower houses dealt with nominations to key executive and judicial posts and with substantive questions and proposals. For the first time, Government ministers appeared before Parliament to answer questions. Parliamentary debates were

reported in the official media, including on sensitive topics not openly discussed before, such as land tenure rights, censorship, compulsory military service legislation, civil service recruitment of ethnic minorities, ethnic minority language education, population relocations, the question of a ceasefire in Kayin State, the question of amnesty for Shan political prisoners, identification cards for Muslim residents of Northern Rakhine State and private sector monopolies.

24. In accordance with the Constitution, Parliament formed various committees, such as the Bill Committee, the Public Accounts Committee, the Rights Committee and the Government Guarantees, Pledges and Undertakings Vetting Committee. Opposition members make up one third of the membership of all of the committees, including as Chair of one committee, while the rest are from the Union Solidarity and Development Party. No military appointees were included. On 1 August, an official announcement was made that the second regular session of Parliament would be convened on 22 August 2011.

Reform agenda

25. In his inaugural speeches to Parliament on 30 March, to members of Government on 31 March, and to the Central Committee for Progress of Border Areas and National Races on 23 April, President Thein Sein outlined initial indicators of the new Government's policy direction in key priority areas during his five-year term. It was the first time in recent history that the Government had set out a public policy agenda and assessment of many of the problems facing the country.

26. In a departure from previous official discourse, the President explicitly recognized that there were many individuals and unlawful organizations inside and outside the nation that did not accept the road map and the Constitution. The President stressed that without national unity, the country where more than 100 national races lived together, could not enjoy peace and stability, which was essential for building a developed nation. While warning against any actions taken outside the constitutional framework, he undertook to convince ethnic groups of the Government's goodwill and to work together with "good-hearted political forces" for peace, stability and development, including by keeping the "peace door" open and welcoming those who held different views to stand for elections.

27. Other key policy themes and priorities on which the President promised reforms included the adoption of an open market economy, improvement of socio-economic conditions and reduction of gaps between rural and urban areas; the protection of social and economic rights; the development of infrastructure and the delivery of basic services, including in ethnic areas; the improvement of health and education standards; the protection of fundamental human rights and freedoms; respect for the rule of law and an independent and transparent judiciary; respect for the role of the media; good governance and public scrutiny of executive and legislative bodies; institutional capacity-building and human resource development; "clean", responsible, accountable and inclusive government; and decentralization.

28. Specifically, the President announced a 10-point legislative reform agenda aimed at: ensuring the conformity of existing laws with the Constitution; safeguarding fundamental rights; increasing salaries of service personnel and pensions; safeguarding the rights of farmers; creating jobs and safeguarding labour rights; overhauling public health care and social security; raising education and

health standards; amending journalism laws; promoting environmental conservation; and enhancing natural disaster response.

National dialogue and reconciliation

29. In a statement broadcast to the World Economic Forum in Davos, Switzerland on 28 January, Daw Aung San Suu Kyi underscored the need for national reconciliation, political stability and economic growth grounded in human resource development, as basic requirements of good governance. She called for investments in Myanmar to put a premium on respect for the law, environmental and social factors, labour rights and job creation. She called for economic policies linked to human development and capacity-building; innovation and diversification of investments in technology and infrastructure; entrepreneurial and microcredit opportunities to fight poverty; health prevention measures; environmentally and socially responsible development; and legal reform and the rule of law.

30. On 8 February, the National League for Democracy issued a review of sanctions against Myanmar, which concluded that economic conditions were not affected by sanctions to any notable degree; that the best way to remove sanctions would be to deal effectively with violations of human rights and the lack of democratic practices; and that, meanwhile, the economic hardships of the people would be ameliorated if foreign investments observed guidelines aimed at conserving the environment, protecting labour rights and promoting civil society. The party also called for discussions with concerned Member States to reach an agreement on when, how and under what circumstances sanctions might be modified, noting that a study by respected professionals on the effects of sanctions would be useful.

31. On 11 March, the Group of Democratic Party Friends, formed by the 10 largest democratic and ethnic political parties in Parliament, issued an open letter calling on the international community to recognize Myanmar's political developments, including the creation of new political space, the transition to a new generation of leaders and the election of political parties. Noting that sanctions against Myanmar, while not the prime cause of poverty, hit labour-intensive sectors, prevented job creation and denied society the benefits of increased foreign investment, the Group called for the lifting of sanctions and for increased donor funding and assistance for governance and socio-economic reform through advice and cooperation in tourism, trade and investment.

32. On 27 March, the National League for Democracy issued a statement urging the authorities to create fair political conditions by releasing all political prisoners and engaging immediately in politically meaningful dialogue to eliminate misunderstandings between democratic forces and the *Tatmadaw*.

33. On 25 April, the National League for Democracy issued a statement welcoming the President's commitment to the rule of law. Referring to individual cases contravening judicial principles, the statement called for further guidelines to be issued in order to establish the rule of law, including through due process and fair trial in the administration of justice.

34. On 16 May, it was announced that President Thein Sein had granted an amnesty on humanitarian grounds and out of consideration for the families of the

inmates by commuting death sentences to life sentences, and commuting other prison terms by one year. As a result, more than 100 political prisoners, including 23 members of the National League for Democracy, were reported to have been released out of an estimated 2,000 political prisoners in detention.

35. In an open letter dated 20 May, the 10 political parties forming the Group of Democratic Party Friends welcomed the amnesty as a goodwill gesture, but stated that it fell too short to contribute meaningfully to national reconciliation, as it did not apply to political prisoners serving lengthy sentences. Noting that Myanmar's transition under an elected Government required the building of trust among political forces as a crucial step to install democratic change, the Group called for the release of political prisoners and the return of exiled dissidents.

36. On 28 June, the Ministry of Home Affairs warned Daw Aung San Suu Kyi and the Chair of the National League for Democracy, Aung Shwe, that since the party had been officially dissolved, its activities were illegal and should stop as they could harm peace, stability and the rule of law and could create more difficulties for national reconciliation. The Ministry informed that, in order to engage in social affairs, an application should be made to form a social organization. State media similarly warned the party to stop its activities in order to avert unnecessary consequences, noting that its leaders had the right to form a political party and should try to stand for elections as a legal party. It also warned of security concerns around any planned visits by Daw Aung San Suu Kyi outside Yangon, but noted that she would not be restricted from travelling.

37. On 29 June, the National League for Democracy publicly responded that it remained a legally registered political party that did not infringe the 2008 Constitution and that it therefore could neither dissolve nor accept court rejections of its appeals on the matter. Out of common interest in national reconciliation, the party requested a meeting with the Minister for Home Affairs to discuss the establishment of the rule of law.

38. From 4 to 7 July, Daw Aun San Suu Kyi travelled without incident to Bagan and surrounding areas on a four-day private trip in what was the first time she had travelled outside Yangon since the Depayin incident of May 2003.

39. In an encouraging development, on 19 July, at the Government's invitation, Daw Aung San Suu Kyi attended for the first time in nine years official ceremonies on the occasion of "Martyrs Day" in Yangon. Separately, she and the National League for Democracy led the largest public march since the demonstrations that took place in 2007. The party reiterated its commitment to solving political problems through political means and called upon the authorities to create fair political conditions through meaningful dialogue and the release of political prisoners.

40. On 25 July, a meeting was held at the invitation of the Government between the Minister for Social Welfare, Aung Kyi, and Daw Aung San Suu Kyi, marking the first talks between her and the Government since her release. In a joint statement, both said that the meeting was positive, expressed satisfaction with the results and agreed to meet again at an appropriate time. They discussed possibilities for cooperation for the benefit of the people, including matters relating to the rule of law and the eradication of misunderstandings. Through a statement, I welcomed and encouraged the efforts to build mutual understanding through genuine dialogue. I

further reiterated my call for the Government to consider early action for the release of political prisoners.

41. During the reporting period, tensions continued with both ceasefire and non-ceasefire armed ethnic groups, including Kachin, Karen, Shan and Wa forces. The most serious tensions involved armed clashes starting on 9 June in Kachin and Northern Shan states between the *Tatmadaw* and the Kachin Independence Army, with the risk of an escalation into large-scale violence and open fighting for the first time since the signing of a ceasefire agreement in 1994. The conflict reportedly resulted in casualties on both sides, as well as human rights violations, displacement of civilian population and the destruction of infrastructure.

42. On 24 June, the Speaker of the People's Assembly reported that skirmishes between the *Tatmadaw* and the Kachin Independence Army had caused panic locally and nationally, but that coordinated efforts had made it possible to bring the situation under control and, as a result, peace and stability in the region had been almost fully restored. Since the outbreak of fighting, several rounds of negotiations were reported to have been held, involving central and local authorities and representatives of the Union Solidarity and Development Party, the Kachin Independence Army and the Kachin Independence Organization. In an open letter dated 28 July, Daw Aung San Suu Kyi called for any tensions involving armed ethnic groups to be resolved through political negotiations in the interest of national unity and expressed her support for ongoing efforts to that end.

43. Since 21 June, the Office of the United Nations Resident Coordinator has met with representatives of the Ministry of Social Welfare, Relief and Resettlement to express concern about the humanitarian situation in Kachin State, especially for civilians, to request and share information on reported population displacements and other concerns, to request access to perform humanitarian assessments and deliver assistance, and to discuss humanitarian corridors and safe passage options.

Human rights mechanisms

44. On 27 January 2011, Myanmar underwent its first universal periodic review by the Human Rights Council. Out of 180 recommendations made during the course of the review, Myanmar rejected 70, accepted 64 and agreed to study a further 46.

45. On 7 March, the Special Rapporteur submitted his fourth report (A/HRC/16/59) to the Human Rights Council. On 25 March, the Council adopted resolution 16/24, in which, inter alia, the Council expressed regret that no visit of the Special Rapporteur had been allowed since February 2010 and extended his mandate by one year. The Council also expressed its strong support for the good offices mission, and called on the Government to ensure full cooperation with my Special Adviser and the Special Rapporteur. On 22 July, the Special Rapporteur was invited to visit Myanmar in August.

46. On 1 and 2 July, for the first time in six years, the International Committee of the Red Cross was permitted to resume visits to inspect prison conditions in three different localities.

Socio-economic development

47. On 27 June, the Government and the Economic and Social Commission for Asia and the Pacific (ESCAP) jointly organized the Third Development Partnership Forum in Nay Pyi Taw. Opened by Vice-President Mauk Kham and co-chaired by the Executive Secretary of ESCAP and the Minister for National Planning and Economic Development, the broad-based conference focused on policies for reviving Myanmar's rice economy as the most critical part of the agricultural sector, affecting 70 per cent of the population. Government policymakers engaged in dialogue with representatives of civil society, the private sector and local and international experts. Proposals were recommended for consolidation by the Government as action plans. The Forum built on the Second Development Partnership Forum, held in 2009, and on a national workshop on poverty alleviation and rural development, held in May 2010. The Executive Secretary of ESCAP met with Daw Aung San Suu Kyi at the conclusion of the Forum.

III. Content and outcome of discussions

48. In a meeting with the Ministers for Foreign Affairs of ASEAN, held in New York on 24 September, I emphasized the critical need for free, fair and inclusive elections in order to advance stability and development in Myanmar. I stressed that failure to meet those expectations could undermine the credibility of the process, which could reflect on the collective values and principles of ASEAN. I called on ASEAN member States to encourage Myanmar to engage more closely with my good offices.

49. In my meeting with former Minister for Foreign Affairs Nyan Win in New York on 26 September, I stressed that it was not too late for the Government to make goodwill gestures to enhance the credibility of the elections, including by allowing Daw Aung San Suu Kyi the right to vote and by releasing as many political prisoners as possible. The Minister suggested that the political situation would be totally changed after the elections. I stressed the need for the Government and its successor to continue to engage actively with my good offices and Special Adviser.

50. At the third ASEAN-United Nations summit in Hanoi on 29 October, I briefed ASEAN leaders on my good offices, stressing the need for a credible democratic transition and national reconciliation, including free, fair and inclusive elections. In my bilateral meeting with Prime Minister Thein Sein on 30 October, I stated that the United Nations and the international community were not satisfied with arrangements for elections and reiterated my call for release of political detainees, including Daw Aung San Suu Kyi, prior to elections. In addition to a credible ballot, I stressed the importance of transparent election results and an inclusive process of government formation. The Prime Minister confirmed that Senior General Than Shwe and Vice-Senior General Maung Aye would not contest the elections. He indicated that amnesties would continue to be granted. Stressing that the new Government would continue to cooperate with my good offices, he called for closer international engagement with Myanmar in the socio-economic and political fields.

51. In my telephone discussion with Daw Aung San Suu Kyi on 18 November, we agreed on the need for all political prisoners to be released as a matter of priority. I told Daw Aung San Suu Kyi that I was encouraged by the spirit of reconciliation

from her statements and appeals for dialogue and compromise following her release, and that I would continue to encourage all parties to work together in the national interest. Daw Aung San Suu Kyi expressed her appreciation for the important role of the United Nations in Myanmar, and for my continuous efforts on her behalf. She expressed support for an early visit by my Special Adviser and her desire to engage closely. I reiterated my commitment to continue to uphold the cause of human rights, peace and democracy in Myanmar.

52. From 27 to 28 November, my Special Adviser visited Myanmar at the invitation of the Government. This marked the first direct engagement in Myanmar with my good offices since my visit in July 2009. For the first time, the United Nations had more flexibility to organize its programme. My Special Adviser met with the former Minister for Foreign Affairs, Nyan Win, senior officials from the Ministries of Planning and Border Affairs, the Election Commission, and the Union Solidarity and Development Party Secretary General, Htay Oo. For the first time, my Special Adviser met Daw Aung San Suu Kyi and members of the Central Executive Committee of the National League for Democracy at her residence. He also met on United Nations premises with representatives of the political parties that had won seats in the elections and with civil society leaders.

53. In response to the concerns corroborated by the political parties and civil society regarding the elections, the Government and the Election Commission noted that no official complaints had been filed and that electoral laws had included procedures for filing such complaints. They stressed that there was no ban on the registration of new political parties. Irrespective of formal complaints, my Special Adviser underlined that failure to address electoral concerns quickly and transparently would leave the credibility of the process in doubt. He also stressed the need to establish good electoral practice, starting with by-elections.

54. With regard to the broader political process, my Special Adviser emphasized that the political forces that had decided not to participate in the election should not be excluded from dialogue if any transition were to succeed, stressing that they would continue to form a critical part of the political landscape. With the elections over, he emphasized that the case for dialogue and reconciliation was even stronger than before and that the authorities should be in a better position to reach out to their critics. Interlocutors all accepted the need for continued efforts at national reconciliation but differed in their expectations and on the way forward.

55. Government interlocutors, as well as the Union Solidarity and Development Party and the National Unity Party, expressed confidence in the continued implementation of the road map, stressing that all parties had the opportunity to participate in the elections and that national reconciliation should continue to unfold within the established framework of the Constitution. They called on the international community to recognize the progress made in that context, including through the removal of sanctions. Although the authorities remained non-committal, they did not reject outright calls for dialogue, an inclusive process of government formation, and the release of political prisoners.

56. Daw Aung San Suu Kyi expressed her determination to continue to work for national reconciliation based on dialogue, noting that a parody of democracy was worse than an outright dictatorship. She expressed her desire to listen to various views in order to form a more complete picture of the post-election situation. She made clear her readiness to respond to meaningful efforts by the authorities to

engage with her and the National League for Democracy. She did not elaborate on her position regarding sanctions beyond stating the need for a detailed assessment of their impact. She conveyed her expectation that my good offices and the Special Adviser be fully engaged in promoting political dialogue, human rights and the rule of law. She also indicated her interest in engaging closely with the United Nations Development Programme (UNDP) and other partners.

57. Despite their disappointment and frustration with the election, representatives of democratic and ethnic political parties viewed their toehold in the process as a legitimate platform from which to build on the gains they had made by maximizing what they described as "new political space" within the new constitutional framework. While conscious of the challenges they would continue to face given their limited representation, they pointed to potential cooperation and engagement among themselves and with others, including the Union Solidarity and Development Party.

58. All interlocutors stressed the need to address the development and humanitarian needs of the country and their expectation of an increased role for the United Nations in that regard. According to the authorities and Union Solidarity and Development Party, Myanmar needed to develop economically in order to ensure stability and democratic practices. The former Minister for Foreign Affairs reiterated Myanmar's commitment to cooperate with the United Nations at the technical and policy levels and called for greater donor assistance. Stressing that Myanmar was the only country where UNDP did not operate a normal country programme owing to restrictions imposed by its Executive Board, the Government explicitly called for the lifting of such restrictions. It gave assurances to resolve access and timely visa issuance for United Nations agencies.

59. Daw Aung San Suu Kyi welcomed her ongoing contact and interaction with the United Nations Resident Coordinator and expressed her commitment to work with the United Nations system, including on policy and operational constraints affecting humanitarian and developments activities. Consistent with their campaign platforms, most political parties identified socio-economic questions as priority agendas to address the needs of their constituencies. Civil society leaders made a strong case for all stakeholders to shift from political confrontation towards improving the country's political economy. In their view, the experience of civil society since Cyclone Nargis in 2008 showed that progress often took place via constructive engagement within existing frameworks. They stressed the need for a more nuanced understanding of existing opportunities to address the country's problems as part of a broader agenda of liberalization. Similarly, independent experts saw new opportunities for addressing issues of economic management as essential to any democratic transition, including a more transparent legislative and budgetary process.

60. Prior to returning to Myanmar, my Special Adviser met in Jakarta on 10 May with Minister for Foreign Affairs of the Government of Indonesia and Chair of ASEAN, Marty Natalegawa, to discuss the outcome of the 18th ASEAN summit, held there on 7 and 8 May, at which a proposal for Myanmar to assume the ASEAN Chair in 2014 had been considered. My Special Adviser was informed that a formal decision on the proposal had been deferred to the 19th ASEAN summit, scheduled to be held on 17 and 18 November 2011, pending a planned visit by the Chair of ASEAN to Myanmar.

61. From 11 to 13 May, my Special Adviser visited Myanmar again at the invitation of the new Government for the first time since its installation. In Nay Pyi Taw, he was received by the Minister for Foreign Affairs, Wunna Maung Lwin, and met the Ministers for Home Affairs, Social Welfare, and National Planning and Development, as well as senior officials from the Ministries of Commerce, Health and Education. He met with newly appointed presidential advisers for political, legal and economic affairs. He was also received by the Deputy Speaker of the People's Assembly, and by the Secretary-General of the Union Solidarity and Development Party. In Yangon, he met again with Daw Aung San Suu Kyi and members of the Central Executive Committee of the National League for Democracy , as well as representatives of opposition and ethnic political parties in Parliament and civil society. He also visited Bago to meet with Chief Minister and former Minister for Foreign Affairs, Nyan Win.

62. In all of his meetings, my Special Adviser emphasized the importance for the new Government to be proactive in taking concrete steps to implement the reforms announced by President Thein Sein. He stressed that gaining domestic and international confidence that Myanmar was changing would be as much a factor of leadership and policies as delivering on people's expectations. He cautioned that the longer it took to implement promised reforms, the greater the frustration.

63. My Special Adviser emphasized that the release of political prisoners remained the single most important step that could generate greater confidence in the Government's efforts, noting that it was a key demand of all democratic and ethnic political forces inside and outside the process. Although the authorities continued to deny the existence of political prisoners, my Special Adviser received indications that the question of amnesty was under consideration as a matter falling within the powers of the President to decide. This was confirmed by the amnesty announced on 16 May following the visit.

64. With regard to the political process, my Special Adviser urged the Government to reach out as broadly as possible to all stakeholders, including those not represented in Parliament. He pointed to the experience of the United Nations in other transitional contexts, which showed that the success of any reform depended in large part on the degree of support across society. He reiterated that with the completion of the road map, the new Government should be in a position to engage with its critics, including through a dedicated capacity to promote broad-based dialogue. In response, Government interlocutors recognized the need for greater outreach with society at large, expressing openness to different viewpoints and ideas. Their position, however, was that Parliament offered a legitimate level playing field for transparent debate and negotiation among elected representatives. The Minister for Foreign Affairs stressed that the door remained open for all those wishing to participate in the political process through elections. The authorities also recognized the necessity to work out peaceful solutions with armed ethnic groups. With reference to Daw Aung San Suu Kyi, Government interlocutors pointed to the fact that her release was unconditional and suggested that they were waiting to see how she would respond to the President's reform agenda.

65. With regard to the electoral process, my Special Adviser urged the authorities to learn lessons from the shortcomings of the 2010 elections in order to enhance the credibility of any future ballots. He noted that the by-elections presented a first opportunity to ensure a more inclusive, participatory and transparent process. The

authorities pointed to the fact that Parliament had appointed a new Electoral Commission.

66. With regard to human rights, my Special Adviser urged the Government to cooperate actively with United Nations human rights mechanisms, including the Special Rapporteur, in order to address outstanding concerns about ongoing reports of human rights violations as well as to strengthen governance capacity, including training, institutional reform, and the rule of law. The Ministers for Foreign and Home Affairs both noted that the international response to Myanmar's universal periodic review was encouraging, and gave assurances that the Government was in the process of implementing recommendations made as part of the review.

67. With regard to humanitarian and development assistance, my Special Adviser stressed the need for Myanmar to respond to overtures by the donor community and to build on the efforts of ESCAP, UNDP and other partners. The authorities agreed to collaborate more closely with the United Nations system, including in the areas of health, education and capacity-building. At the same time, they stressed the need to address three specific concerns regarding "unfair treatment" by: (a) lifting unilateral sanctions against Myanmar; (b) increasing development assistance; and (c) lifting restrictions on the UNDP country programme.

68. My Special Adviser further observed that the Government's commitment to reform offered an opportunity for enhancing mutual understanding between Myanmar and the international community, which was particularly relevant in the context of Myanmar's proposal to assume the Chair of ASEAN in 2014. He encouraged the authorities to reach out to the international community and to engage more openly and regularly with my good offices. To that end, he extended on my behalf an invitation to the Minister for Foreign Affairs to meet with the Group of Friends in New York and renewed an offer to have a discreet political presence in Myanmar in support of the good offices mission.

69. Interlocutors from the Government and the Union Solidarity and Development Party emphasized that Myanmar was only at the beginning of its political transition and that its new decentralized framework was still in the process of being organized. While non-committal to any suggestions, they stressed the Government's determination to accelerate the transition and implement reforms. They made clear their expectation of greater international recognition for having completed the road map in an orderly manner, stressing that the time had come for the international community to reconsider its approach towards Myanmar in a more constructive way. At the same time, they recognized the expectations of the United Nations and the international community to see forward movement on key outstanding concerns.

70. Daw Aung San Suu Kyi stated that she and the National League for Democracy did not want to take a negative attitude, but that they remained extremely cautious until there was evidence of meaningful change. In her assessment, the situation had not changed profoundly because the Government was driving for legitimacy through symbols rather than actions. Noting that all three branches of the Government were controlled by the same political party, she expressed concern at the Government's propensity to fill the political space to the exclusion of others. She stressed that there was no reason for further delaying the release of political prisoners or implementing overdue reforms. She observed that any positive developments should be measured against outstanding concerns, including the fact that the Special Rapporteur had not yet been invited back to

Myanmar. She reiterated her readiness to respond to any genuine effort by the Government to engage with her and the National League for Democracy.

71. Daw Aung San Suu Kyi and members of the Central Executive Committee of the National League for Democracy noted that they had exhausted legal appeals against the official dissolution of their party, but that they would seek to maintain its existence through the Human Rights Council. They registered their endorsement of the latest resolution of the Human Rights Council on Myanmar. They indicated that the party was not currently prepared to endorse participation in elections within the existing framework. They expressed satisfaction, however, at the expansion of the party's social network and activities, and called for cooperation from the authorities in that regard. Daw Aung San Suu Kyi again welcomed her ongoing contact and interaction with the United Nations system, including on the restrictions affecting humanitarian and development activities. She reiterated her appreciation for my good offices and her expectation that my Special Adviser would be fully engaged.

72. Most political parties and civil society organizations took a cautious "wait and see" attitude towards the Government's capacity to deliver reforms, but welcomed the President's agenda and cautioned that the new Government should not be judged too soon. Of greatest significance to them was the Government's openness to hear different opinions, including through the appointment of independent advisers. They shared the view that, whereas the previous system essentially had one focal point of power, the elections had opened new political space for multiple actors, parties, institutions and agendas to influence governance. They expressed their determination to contribute to reforms.

73. While political parties shared mixed experiences of parliamentary procedures, they expressed a sense of empowerment to engage in political activity. Most called for amnesty for political prisoners, with some also calling for Myanmar's expatriate community to be welcomed back. Some suggested that the Government organize a "union convention" as a broad-based platform for addressing national challenges. Several ethnic parties saw decentralization as key to ending armed conflict, while stressing the urgent need to tackle outstanding challenges in border areas. Most registered their position that socio-economic issues had become priority agendas for the electorate, echoing the Government's calls for greater development assistance and the lifting of sanctions.

74. Civil society leaders welcomed what they described as "new governance", whereby authorities set benchmarks for state-building, and "agents of change" had a framework and space to work in. Noting that reforms could enable more stakeholders to partake in reconciliation, they saw their role as facilitating relations between communities and the Government. They pointed to recent positive changes, including the lifting of military checkpoints in some areas; the relaxation of media restrictions and censorship; the transfer of import-export licensing to civilian authority; new investment and environmental laws; the abolition of trade monopolies; the development of a poverty-reduction strategy; and Government consultations with business and civil society.

75. From 27 to 30 June, as a follow-up to my Special Adviser's visit and on the margins of the Third Development Partnership Forum, the Office of my Special Adviser for the first time had the opportunity to engage at the working level with a range of domestic interlocutors in Nay Pyi Taw and Yangon, including presidential advisers and civil society representatives.

76. On 29 July, I spoke by telephone with the Minister for Foreign Affairs, Wunna Maung Lwin. On 27 July, my Special Adviser spoke by telephone with Daw Aung San Suu Kyi. The calls were intended to convey the expectations of the United Nations that, in building on recent developments, efforts should be intensified in order to address outstanding issues, including the release of political prisoners, national dialogue and reconciliation, consistent with the stated objectives of the reform agenda.

IV. Observations

77. After almost 50 years of military rule, and 20 years after the most recent elections, the completion of the road map spearheaded by the State Peace and Development Council affords new opportunities for a more inclusive national discourse and political development. The transfer of power from the Council to the new Government, the resignation of Senior General Than Shwe and the release of Daw Aung San Suu Kyi offer new prospects for Myanmar to embark on the path of progress and improve its standing regionally and globally. Against the backdrop of a decades-long conflict and political deadlock, the United Nations recognizes the significance of such developments.

78. President Thein Sein declared that the time had come for Myanmar to catch up with the changing world and that there was no time to waste. Myanmar continues to face the same challenges it has faced for too long: the country's human rights, political, social, economic and humanitarian problems remain serious, deep-seated and long-standing. I therefore welcome President Thein Sein's recognition of the need for Myanmar to undertake wide-ranging political and economic reforms, and his commitment to do so in a way that would strengthen national unity.

79. The Government's stated commitments appear to resonate more closely with the needs and hopes of the people of Myanmar and correspond more closely to the concerns and expectations of the international community than in the past. I believe that this can provide the basis for more effective cooperation in implementing the objectives of the mandate entrusted to me by the General Assembly. That is all the more important if Myanmar is to overcome perceptions of it as a country in perpetual crisis and to resume its rightful place as a respected and responsible member of the international community. The real test, however, lies in the timely implementation of the Government's commitments. The United Nations would like to see Myanmar succeed in that endeavour.

80. Despite the flawed and controlled nature of the elections, the credibility of which could have been enhanced had the suggestions of the United Nations been taken, the participation of the political parties and voters signalled their readiness to take advantage of the first window of political space in 20 years. Notwithstanding the disappointment and frustration of many at the process and its outcome, it allowed for a resumption of legal political activity, which had been either banned or restricted for almost five decades. In any transitional context, the resumption of political life is a prerequisite for broad-based societal reconciliation. The multiplicity of voices and plurality of actors and agendas that have emerged are indicative of the complexity of the political environment in Myanmar.

81. As shown by the outpouring of support upon her long-awaited release, the enduring appeal of Daw Aung San Suu Kyi and the ideals she represents remain a

political reality. I am encouraged that she and her followers have been allowed to engage in public activities, including meeting visiting foreign delegations and travel outside Yangon. I expect that they will continue to be able to exercise such freedoms without restrictions. Daw Aung San Suu Kyi stands as an important figure within and beyond Myanmar, and her welfare and well-being are the subject of international attention. Any restrictions on her movements or threats to her security would cause serious concern and send the wrong signal.

82. The continued detention of political prisoners remains of deepest concern to the United Nations and the international community. It is inconsistent with the Government's commitments and initial efforts towards greater openness and respect for fundamental freedoms and the rule of law. It is also counterproductive to fostering social peace and dialogue. The detention of all remaining political prisoners will continue to overshadow and undermine any confidence in the Government's efforts. Ultimately, it would be a loss for Myanmar, since the country needs the talent of all of its people to build a better future.

83. Of equal concern are ongoing tensions and armed conflict with some armed ethnic groups. In line with the efforts over the years to uphold ceasefire agreements and with President Thein Sein's commitment to keep the "peace door" open, urgent efforts are needed by all sides to avoid the escalation of tensions and to negotiate durable solutions to outstanding political and security concerns as part of a broader national reconciliation process. Failure to do so would not only affect the communities concerned, but could also hold back the process of reform, including prospects for ethnic aspirations to be legitimately addressed within the new political structures. Myanmar cannot afford for there to be impediments to the peace and unity that are needed for its stability and development.

84. While it would be premature to assess the nature and extent of political change in Myanmar, various shifts are apparent. After two decades of closed policymaking, such shifts can and should allow for more informed, broad-based, transparent and accountable processes to guide any governance reform and democratic transition. In such processes, the relationship between military and civilian authorities will be central to any genuine departure from the status quo.

85. The question for all stakeholders is how to use opportunities within the current dispensation to advance national reconciliation. Whether recent developments can lead to greater openness and inclusiveness will depend on how all parties choose to work with each other. It is in the national interest that all extend and accept conciliatory engagement. Maximizing the limited space available is critical. Ultimately, the Government has a responsibility to ensure the broadest possible support for reforms by reaching out to all political forces, including those not represented in Parliament. In the light of the current environment, I look forward to intensifying the engagement of my good offices on an ongoing basis.

86. Whether the new Government has the capacity, willingness and support to deliver on its reform agenda remains to be seen. The international community, particularly regional and ASEAN countries, have a stake in the success of reform. The collective challenge is to enable the current process to result in a credible transition that can contribute to the country's stability and development. The promise of reforms offers a chance for better mutual understanding between Myanmar and the international community. I stand ready to explore with Myanmar and interested stakeholders, including donors and development partners, how the international community and the United Nations system may be able to encourage and support effective reforms in the interest of the people of Myanmar.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report prepared by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, in accordance with General Assembly resolution 65/205.

* A/66/150.

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Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 65/205, the Special Rapporteur addresses issues of special concern and recent developments in the context of his mandate.

The Special Rapporteur draws the attention of the General Assembly to his assessment that solitary confinement is practised in a majority of States. He finds that where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.

The report highlights a number of general principles to help to guide States to re-evaluate and minimize its use and, in certain cases, abolish the practice of solitary confinement. The practice should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He further emphasizes the need for minimum procedural safeguards, internal and external, to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person.

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I. Introduction

1. The present report, submitted pursuant to paragraph 39 of General Assembly resolution 65/205, is the thirteenth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is the first report submitted by the present mandate holder.

2. The Special Rapporteur wishes to draw attention to his report to the Human Rights Council (A/HRC/16/52), in which he outlined his vision, working methods and priorities for his tenure as Special Rapporteur.

II. Activities related to the mandate

3. Below is a summary of the activities carried out by the Special Rapporteur pursuant to the mandate since the submission of his report to the Human Rights Council (A/HRC/16/52 and Add.1-6).

Communications concerning human rights violations

4. During the period from 1 December 2010 to 1 July 2011, he sent 20 letters of allegations of torture to 18 Governments, and 95 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 48 Governments. In the same period 82 responses were received.

Country visits

5. With respect to fact-finding missions, an anticipated country visit to Kyrgyzstan for May 2011 was postponed, at the request of the Government, owing to ongoing political developments. By letter dated 28 July 2011, the Government of the Kyrgyz Republic proposed a country visit for the second half of August 2011. The Special Rapporteur welcomes this invitation; however, because of the short notice, he is discussing potential dates with the Government at the time of submitting the present report. He has accepted an invitation from the Government of Iraq to visit the country in October 2011. He has also been invited to visit Bahrain and is discussing dates with the Government. In addition to the pending country visit requests (see A/HRC/16/52, para. 6) the Special Rapporteur has requested a visit to Morocco with respect to Western Sahara.

6. The Special Rapporteur conducted a visit to Tunisia from 15 to 22 May 2011. He shared his preliminary findings with the interim Government and issued a press statement on 22 May expressing his appreciation to the Government for the full cooperation extended to him. He noted that the Government had undertaken a series of positive steps towards ensuring accountability and long-term reforms. However, he is of the view that a "wait and see attitude" in anticipation of the Constituent Assembly election may be hampering the possibility of delivering bold and aggressive steps in restoring justice for past and recent abuses. The Special Rapporteur stressed that swift, effective and independent criminal investigations against alleged perpetrators of torture and ill-treatment should be ensured and administrative programmes should be launched offering redress and reparation services to victims of past and recent violations. The report of the mission to Tunisia will be presented to the Human Rights Council at its nineteenth session in March 2012.

Key press statements

7. The Special Rapporteur issued the following press statements (many were joint statements with other mandate holders):

- On 31 December 2010 — expressing serious concern that enforced or involuntary disappearances, arbitrary detentions, extrajudicial, summary or arbitrary executions, and acts of sexual violence may have occurred or may still be occurring in Côte d'Ivoire in relation to the presidential elections.
- On 14 January 2011 — urging the Government of Tunisia to control the use of force against peaceful demonstrations, after at least 21 deaths were officially confirmed.
- On 3 February 2011 — on public unrest in Belarus, Egypt and Tunisia and the alleged infliction of torture or cruel, inhuman or degrading treatment in connection with suppression of peaceful demonstrations.
- On 17 February — urging the transitional Government in Egypt to establish an independent inquiry to investigate human rights violations during the revolution in that country, with the powers to transmit names and evidence for prosecution to the relevant authorities.
- On 18 February — urging the Governments of Bahrain and the Libyan Arab Jamahiriya to guarantee the right to peaceful protest and immediately cease the use of excessive and lethal force.
- On 22 February — on the situation of human rights defenders expressing serious concerns about gross violations of human rights that were being committed in the Libyan Arab Jamahiriya.
- On 3 March 2011 — condemning the violent crackdown on protesters in Yemen, and urging the Government to stop the excessive use of force as a means to end ongoing protests.
- On 22 March — expressing concerns about increased incidents of serious human rights violations in the capital of Bahrain.
- On 1 April 2011 — expressing concerns about serious human rights violations in Côte d'Ivoire, including enforced disappearances, extrajudicial killings, killing and maiming of children, and sexual violence which may amount to international crimes, and expressed the full support of the Special Rapporteur and other mandate holders for Security Council resolution 1975 (2011).
- On 11 April and 12 July — expressing frustration that despite his repeated requests to visit Private First Class Bradley E. Manning, the Government of the United States of America has not granted him unmonitored access to the detainee. The question of unfettered access goes beyond this case and touches on whether the Special Rapporteur would be able to conduct private and unmonitored interviews with detainees if he were to conduct a country visit to the United States.
- On 15 April — denouncing the rising death toll and brutal crackdown on peaceful protesters, journalists and human rights defenders in the Syrian Arab Republic despite the Government's promises of reforms and consultations to end the 48-year-old emergency rule.

- On 1 July 2011 — urging the Government of the United States to stop the scheduled execution of Humberto Leal García in Texas.

Highlights of key presentations/consultations/training courses

8. From 8 to 9 February 2011, the Special Rapporteur participated in a meeting sponsored by Amnesty International in London to discuss "Developing International Best Practice for Inquiries and Investigations into Torture". He also spoke at the All Party Parliamentary Group on Extraordinary Rendition.

9. On 22 February, he delivered a statement to the American Academy of Forensic Sciences at its 63rd annual meeting on "International framework and mechanisms for documenting conditions of detention, torture and ill-treatment".

10. On 28 February, he met with high-ranking officials from the Department of State and the Department of Defense of the United States of America in Washington, D.C., and again with the Department of Defense on 22 April to discuss issues of mutual concern.

11. From 6 to 10 March 2011, the Special Rapporteur was in Geneva for the sixteenth session of the Human Rights Council and met with the Ambassadors of Iraq, Kyrgyzstan, Mexico, Thailand and the United States. He also met with all the Human Rights Council regional groups except for the Africa Group, which unfortunately could not be scheduled.

12. On 16 and 17 March, in Washington, D.C., he participated in a meeting with the Chair of the Committee against Torture, the Vice-Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights, a representative of the European Committee for the Prevention of Torture and the Special Rapporteur on Detained Persons of the African Commission on Human and Peoples' Rights. The meeting was organized jointly by the Washington College of Law of American University and the Association for the Prevention of Torture to discuss ways to strengthen the working relations of those mechanisms.

13. From 18 to 20 March, the Special Rapporteur made two presentations to the annual General Meeting and the fiftieth anniversary commemoration of the United States Section of Amnesty International in San Francisco.

14. On 1 June 2011, he was the keynote speaker at an event in Washington, D.C., organized by several faith-based groups and entitled "Accountability Today: Preventing Torture Tomorrow".

15. From 15 to 17 June, the Special Rapporteur chaired, with the support of the Government of the Netherlands, a regional consultation on torture for the Americas in Santiago, Chile. The regional consultation was organized in partnership with the Association for the Prevention of Torture, the Centro de Estudios Legales y Sociales, Corporación Humanas — Centro Regional de Derechos Humanos y Justicia de Género and Conectas Direitos Humanos, and was an opportunity for governments, national institutions and organizations of civil society from 12 countries to discuss follow-up to recommendations of country visits and to strengthen local and regional protection mechanisms against torture and ill-treatment.

16. On 20 June, he met with the Director General for Foreign Policy, Ministry of Foreign Affairs of Chile, in Santiago.

17. From 27 June to 1 July, the Special Rapporteur participated in the eighteenth annual meeting of Special Rapporteurs in Geneva. He also met with representatives of the Governments of Iraq, Kyrgyzstan, the Netherlands, the Russian Federation, Tunisia and the United States of America.

18. On 7 July 2011, he met in Brasilia with the Minister for Human Rights in the Government of Brazil.

III. Solitary confinement

A. Overview of work undertaken by the mandate

19. In his first report as Special Rapporteur (A/HRC/16/52, para. 70), he recognized that "the question as to whether ... prolonged solitary confinement" constituted "*per se* cruel, inhuman or degrading treatment or punishment has given rise to much debate and discussion in the Human Rights Council", and believed that "the international community as a whole would greatly benefit from a dispassionate and rational discussion of the issues".

20. The Special Rapporteur has received complaints that solitary confinement is used in some countries in the context of administrative detention for national security or as a method to fight organized crime, as well as in immigration detention. He undertook this study because he found the practice of solitary confinement to be global in nature and subject to widespread abuse. In particular, the social isolation and sensory deprivation that is imposed by some States does, in some circumstances, amount to cruel, inhuman and degrading treatment and even torture.

21. The Special Rapporteur's predecessors have noted that prolonged solitary confinement may itself amount to prohibited ill-treatment or torture (E/CN.4/1999/61, para. 394, and E/CN.4/2003/68, para. 26 (m)).

22. The Istanbul Statement on the Use and Effects of Solitary Confinement was annexed to the former Special Rapporteur's 2008 interim report to the General Assembly (A/63/175, annex). The report concluded that "prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. ... [T]he use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services" (A/63/175, paras. 77 and 83).

B. History and current practice of solitary confinement

23. The history of the use of solitary confinement on detainees has been well documented. The practice can be traced to the 1820s in the United States of

America, where it was believed that isolation of prisoners would aid in their rehabilitation. Under this model prisoners spent their entire day alone, mostly within the confines of their cells, including for work, in order to reflect on their transgressions away from negative external influences. Beginning in the 1830s, European and South American countries adopted this practice (A/63/175, para. 81). It must be recognized that 200 years ago this model was a socially and morally progressive way to deal with punishment, as it emphasized rehabilitation and attempted to substitute for the death penalty, limb amputations and other penalties then prevalent.

24. States around the world continue to use solitary confinement extensively (see A/63/175, para. 78). In some countries, the use of Super Maximum Security Prisons to impose solitary confinement as a normal, rather than an "exceptional", practice for inmates is considered problematic. In the United States, for example, it is estimated that between 20,000 and 25,000 individuals are being held in isolation.[1] Another example is the extensive use of solitary confinement in relation to pretrial detention, which for many years has been an integral part of the Scandinavian prison practice.[2] Some form of isolation from the general prison population is used almost everywhere as punishment for breaches of prison discipline. Many States now use solitary confinement more routinely and for longer durations. For example, in Brazil, Law 10792 of 2003, amending the existing "Law of Penal Execution", contemplates a "differentiated" disciplinary regime in an individual cell for up to 360 days, without prejudice to extensions of similar length for new offences and up to one sixth of the prison term. In 2010, the Province of Buenos Aires in Argentina instituted a Programme of Prevention of Violent Behaviour in its prisons which consists of isolation for a minimum of nine months (the initial three months in full isolation), a term that — according to prison monitors — is frequently extended.

C. Definition

25. There is no universally agreed upon definition of solitary confinement. The Istanbul Statement on the Use and Effects of Solitary Confinement defines solitary confinement as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day. In many jurisdictions, prisoners held in solitary confinement are allowed out of their cells for one hour of solitary exercise a day. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, generally monotonous, and often not empathetic.

26. Solitary confinement is also known as "segregation", "isolation",[3] "separation", "cellular",[4] "lockdown", "Supermax", "the hole" or "Secure Housing

[1] Alexandra Naday, Joshua D. Freilich and Jeff Mellow, "The Elusive Data on Supermax Confinement", *The Prison Journal*, vol. 88, issue 1, p. 69 (2008).

[2] Peter Scharff Smith, "The effects of solitary confinement on prison inmates: a brief history and review of the literature", *Crime and Justice*, vol. 34 (2006), p. 441.

[3] Jeffrey L. Metzner, M.D., and Jamie Fellner, "Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics", *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, No. 1, pp. 104-108 (2010).

[4] Sharon Shalev, *A Sourcebook on Solitary Confinement* (London, Mannheim Centre for Criminology, 2008), p. 1.

Unit (SHU)",[5] but all these terms can involve different factors. For the purposes of this report, the Special Rapporteur defines solitary confinement as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between "solitary confinement" and "prolonged solitary confinement" because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.[6]

D. Legal framework

27. International and regional human rights bodies have taken different approaches to address the underlying conditions of social and physical isolation of detainees, and whether such practices constitute torture or cruel, inhuman or degrading treatment or punishment. For example, while the European Court of Human Rights has confronted solitary confinement regimes with regularity, the United Nations Human Rights Committee and the Inter-American Court of Human Rights have most extensively addressed the related phenomenon of incommunicado detention. For the purposes of this report, the Special Rapporteur will highlight the work of universal and regional human rights bodies on solitary confinement only.

1. International level

General Assembly

28. In 1990, the General Assembly adopted resolution 45/111, the Basic Principles for the Treatment of Prisoners. Principle 7 states that efforts to abolish solitary confinement as a punishment, or to restrict its use, should be undertaken and encouraged.

29. In the same year, the General Assembly adopted resolution 45/113, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In paragraph 67 the Assembly asserted that "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ... solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned".

United Nations treaty bodies

30. The Human Rights Committee, in paragraph 6 of its General Comment No. 20, noted that prolonged solitary confinement of the detained or imprisoned person might amount to acts prohibited by article 7 of the International Covenant on Civil

[5] Ken Strutin, "Solitary Confinement", LLRX.com, published on 10 August 2010.

[6] Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement, Crime and Delinquency", vol. 49, No. 1, pp. 124-156.

and Political Rights.[7] In its concluding observations on Rwanda, the Human Rights Committee recommended that "The State party should put an end to the sentence of solitary confinement ..." (CCPR/C/RWA/CO/3, para. 14).

31. The Committee against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pretrial detention, as well as a disciplinary measure. The Committee has recommended that the use of solitary confinement be abolished, particularly during pretrial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and exercised under judicial supervision, and used only in exceptional circumstances, such as when the safety of persons or property is involved (A/63/175, para. 80). The Committee has recommended that persons under the age of 18 should not be subjected to solitary confinement (CAT/C/MAC/CO/4, para. 8).

32. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has pointed out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommended that solitary confinement should not be used in the case of minors or the mentally disabled (CAT/OP/PRY/1, para. 185). The Subcommittee has also recommended that a medical officer should visit prisoners held in solitary confinement every day, on the understanding that such visits should be in the interests of the prisoners' health. Furthermore, prisoners held in solitary confinement for more than 12 hours should have access to fresh air for at least one hour each day (CAT/OP/PRY/1, para. 184). In view of the condition of solitary confinement, the Subcommittee has pointed out that beds and proper mattresses should be made available to all inmates, including prisoners held in solitary confinement (CAT/OP/HND/1, para. 227 (a), and CAT/OP/PRY/1, para. 280).

33. The Committee on the Rights of the Child, in its General Comment No. 10 (2007), emphasized that "disciplinary measures in violation of article 37 [of the Convention on the Rights of the Child] must be strictly forbidden, including ... closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned" (CRC/C/GC/10, para. 89). Moreover, the Committee has urged States parties to prohibit and abolish the use of solitary confinement against children (CRC/C/15/Add.151, para. 41; CRC/C/15/Add.220, para. 45 (d); and CRC/C/15/Add.232, para. 36 (a)).

2. Regional level

European Court of Human Rights

34. In its evaluation of cases of solitary confinement, the European Court of Human Rights considers the rationale given by the State for the imposition of social and physical isolation. The Court has found violations of article 3 of the European Convention on Human Rights where States do not provide a security-based

[7] Human Rights Committee, International Covenant on Civil and Political Rights, General Comment No. 20 (A/47/40, annex VI.A), article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992.

justification for the use of solitary confinement.[8] In circumstances of prolonged solitary confinement, the Court has held that the justification for solitary confinement must be explained to the individual and the justification must be "increasingly detailed and compelling" as time goes on.[9]

35. Through its jurisprudence, the European Court of Human Rights emphasizes that certain procedural safeguards must be in place during the imposition of solitary confinement, for example, monitoring a prisoner's physical well-being,[9] particularly where the individual is not in good health[10] and having access to judicial review.[11]

36. The level of isolation imposed on an individual is essential to the European Court of Human Rights' assessment of whether instances of physical and mental isolation constitute torture or cruel, inhuman or degrading treatment or punishment. A prolonged absolute prohibition of visits from individuals from outside the prison causes suffering "clearly exceeding the unavoidable level inherent in detention".[12] However, where the individual can receive visitors and write letters,[13] have access to television, books and newspapers and regular contact with prison staff[14] or visit with clergy or lawyers on a regular basis,[15] isolation is "partial", and the minimum threshold of severity — which the European Court of Human Rights considers necessary to find a violation of article 3 of the European Convention on Human Rights — is not met. Nevertheless, the Court has emphasized that solitary confinement, even where the isolation is only partial, cannot be imposed on a prisoner indefinitely.[16]

Inter-American System on Human Rights

37. The jurisprudence on solitary confinement within the Inter-American System on Human Rights is more conclusive than within the bodies discussed above. Since its earliest judgments, the Inter-American Court of Human Rights has found that certain elements of a prison regime and certain physical prison conditions in themselves constitute cruel and inhuman treatment, and therefore violate article 5 of the American Convention on Human Rights, which recognizes the right to the integrity of the person. For example, the Court held that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the

[8] *Ilaşcu v. Bulgaria*, Application No. 40653/98, European Court of Human Rights, para. 84 (2004); *G.B. v. Bulgaria*, Application No. 42346/98, European Court of Human Rights, para. 85 (2004).

[9] *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 108 (2010).

[10] *Piechowicz v. Poland*, Application No. 20071/07, European Court of Human Rights, paras. 212 and 213 (2012).

[11] *A.B. v. Russia*, para. 111.

[12] *Ioannou v. Cyprus*, Application No. 24407/04, European Court of Human Rights, para. 80 (2010).

[13] *Kalashnikov v. Russia*, Application No. 47095/99, European Court of Human Rights, para. 196 (2002).

[14] *Rohde v. Denmark*, Application No. 69332/01, European Court of Human Rights, para. 97 (2005).

[15] *Ramirez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, paras. 105, 106 and 135 (2006).

[16] *Ibid.*, para. 145.

right of any detainee to respect for his inherent dignity as a human being".[17] The Court has additionally addressed physical conditions of detention, asserting that "isolation in a small cell, without ventilation or natural light, ... [and] restriction of visiting rights ..., constitute forms of cruel, inhuman and degrading treatment".[18]

38. The Court has additionally recognized that solitary confinement results in psychological and physical suffering that may contribute to treatment that constitutes torture. In at least one case, the Court has identified the physical conditions of solitary confinement, including "a small cell with no ventilation or natural light", and a prison regime where a detained individual "is held for 23 and a half hours a day ..., [and] permitted to see his relatives only once a month, but could have no physical contact with them", when coupled with other forms of physical and psychological aggression, in sum may constitute physical and psychological torture.[19]

39. In its analysis of solitary confinement, the Court has noted that even when used in exceptional circumstances, procedural safeguards must be in place. For example, "the State is obliged to ensure that the detainee enjoys the minimum and non-derogable guarantees established in the [American] Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration".[20] Similarly, the Inter-American Commission on Human Rights has consistently held that all forms of disciplinary action taken against detained persons must comport with the norms of due process and provide opportunity for judicial review.[21]

E. States' rationale for the use of solitary confinement

40. The justifications provided by States for the use of solitary confinement fall into five general categories:

(a) To punish an individual (as part of the judicially imposed sentence or as part of a disciplinary regime);

(b) To protect vulnerable individuals;

(c) To facilitate prison management of certain individuals;

(d) To protect or promote national security;

(e) To facilitate pre-charge or pretrial investigations.

41. The imposition of solitary confinement as a part of an individual's judicially imposed sentence often arises in circumstances of particularly egregious crimes or

[17] *Velázquez-Rodriguez v. Honduras*, Inter-American Court of Human Rights, Series C, No. 4, para. 156 (1988).

[18] *Loayza-Tamayo v. Peru*, Inter-American Court of Human Rights, Series C, No. 33, para. 58 (1997).

[19] *Cantoral-Benavides v. Peru*, Inter-American Court of Human Rights, Series C, No. 69, paras. 62 and 104 (2000).

[20] *Suárez-Rosero v. Ecuador*, Inter-American Court of Human Rights, Series C, No. 35, paras. 51-56 (1997).

[21] Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Mexico* (OEA/Ser.L/V/II.100), para. 254 (2008).

crimes against the State.[22] For instance, in some central European States, individuals convicted and sentenced to capital punishment and to life imprisonment serve their time in solitary confinement (A/64/215, para. 53). In other States, such as in Mongolia, death sentences may be commuted to life sentences spent in solitary confinement (E/CN.4/2006/6/Add.4, para. 47). The use of solitary confinement as a disciplinary measure within prisons is also well documented and is likely the most pervasive rationale for the use of solitary confinement as a form of punishment.[22] Disciplinary measures usually involve the violation of a prison rule. For instance, in Nigeria detainees are punished with solitary confinement of up to three days for disciplinary offences (A/HRC/7/3/Add.4, appendix I, para. 113). Similarly, in the Abepura Prison in Indonesia, solitary confinement for up to eight days is used as a disciplinary measure for persons who violate prison rules (A/HRC/7/3/Add.7, appendix I, para. 37).

42. Solitary confinement is also used to separate vulnerable individuals, including juveniles, persons with disabilities, and lesbian, gay, bisexual and transgender persons, for their own protection. They may be placed in solitary confinement at their own request or at the discretion of prison officials.[23]

43. State officials also use solitary confinement as a tool to manage certain prison populations. Individuals determined to be dangerous, such as gang members, or at high risk of escape may be placed in solitary confinement.[23] Similarly, individuals determined to be at risk of injury, such as sex offenders, informants, and former correctional or law enforcement officers, are often allowed, or encouraged, to choose voluntary solitary confinement in order to protect themselves from fellow inmates.[24] Prisoners may also be placed in some form of solitary confinement in the interests of prison management before, during or after transportation to and from cells and detention facilities.[25] While the duration of solitary confinement when used as a management tool may vary considerably, it is notable that the motivation for its imposition is pragmatic rather than punitive.

44. Individuals determined to be terrorist suspects or national security risks are often subjected to solitary confinement as well. For instance, in Equatorial Guinea a section of the Black Beach Prison consisting of single cells is used for solitary confinement of high security prisoners (A/HRC/13/39/Add.4, appendix I). Solitary confinement can be also used as a coercive interrogation technique, and is often an integral part of enforced disappearance or incommunicado detention (A/63/175, annex). As noted within category (a) in paragraph 40 above, national security also serves as a primary reason for the imposition of solitary confinement as a result of a judicial sentence. For example, in China an individual sentenced for "unlawfully supplying State secrets or intelligence to entities outside China" was allegedly held in solitary confinement for two years of her eight-year sentence (E/CN.4/2006/6/Add.6, appendix 2, para. 26).

45. States also use solitary confinement to isolate individuals during pre-charge or pretrial detention. In some States, such as Denmark, holding individuals in solitary

[22] Shalev, op. cit., p. 25.

[23] Shalev, op. cit., pp. 25 and 26.

[24] Peter Scharff Smith, "Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement", *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 18 (2008), p. 56.

[25] Shalev, op. cit., p. 26.

confinement is a regular feature of pretrial detention (A/63/175, para. 78 (i)). The purposes for the use of solitary confinement in pre-charge and pretrial detention vary widely, and include preventing the intermingling of detainees to avoid demoralization and collusion, and to apply pressure on detainees to elicit cooperation or extract a confession.[26]

F. Conditions of solitary confinement

46. The administration of prisons and the conditions in which prisoners are held is governed by prison regulations and national laws, as well as by international human rights law. Fundamental norms that are binding by virtue of being treaty-based or part of customary international law are supplemented and interpreted through the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in 1957. Although not directly binding, the Standard Minimum Rules are widely accepted as the universal norm for the humane treatment of prisoners.

47. The particular conditions in which detainees are held in solitary confinement vary between institutions and jurisdictions. Most, however, have a number of physical and non-physical conditions (or a prison regime) in common.

1. Physical conditions

48. The principal physical conditions relevant to solitary confinement are cell size, presence of windows and light, and access to sanitary fixtures for personal hygiene. In practice, solitary confinement cells typically share some common features, including: location in a separate or remote part of the prison; small, or partially covered windows; sealed air quality; stark appearance and dull colours; toughened cardboard or other tamperproof furniture bolted to the floor; and small and barren exercise cages or yards (E/CN.4/2006/6/Add.3, para. 47). In some jurisdictions, prisoners in solitary confinement are held in leg irons and subjected to other physical restraints (A/HRC/13/39/Add.4, para. 76 (f)).

49. There is no universal instrument that specifies a minimum acceptable cell size, although domestic and regional jurisdictions have sometimes ruled on the matter. According to the European Court of Human Rights in *Ramirez Sanchez v. France*, a cell measuring 6.84 square metres is "large enough" for single occupancy.[27] The Court did not elaborate on why such measures could be considered adequate; the Special Rapporteur respectfully begs to differ, especially if the single cell should also contain, at a minimum, toilet and washing facilities, bedding and a desk.

50. The presence of windows and light is also of critical importance to the adequate treatment of detainees in solitary confinement. Under rule 11 of the Standard Minimum Rules for the Treatment of Prisoners, there should be sufficient light to enable the detainee to work or read, and windows so constructed as to allow airflow whether or not artificial ventilation is provided. However, State practice reveals that this standard is often not met. For example, in Georgia, window-

[26] Peter Scharff Smith, "Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement", p. 41.

[27] *Ramirez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, para. 102 (2006).

openings in solitary confinement cells were found to have steel sheets welded to the outside bars, which restricted light and ventilation (E/CN.4/2006/6/Add.3, para. 47). In Israel, solitary confinement cells are often lit with fluorescent bulbs as their only source of light, and they have no source of fresh air.[28]

51. Rules 12 and 13 of the Standard Minimum Rules stipulate that detention facilities should provide sufficient sanitary fixtures to allow for the personal hygiene of the detainee. Therefore, cells used for solitary confinement should contain a lavatory and wash-basin within the cell.[29] In its 2006 report on Greece, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment observed that isolation cells in the Komotini Prison failed to meet the necessary minimum standard for sanitary fixtures because detainees were forced to use the toilet for a wash-basin as well.[30] Other environmental factors, such as temperature, noise level, privacy, and soft materials for cell furnishings may also be implicated in the solitary confinement setting.

2. Prison regime

52. The principal aspects of a prison regime relevant to an assessment of the conditions of solitary confinement include access to outdoor exercise and programming, access to meaningful human contact within the prison, and contact with the outside world. In accordance with rule 21 of the Standard Minimum Rules for the Treatment of Prisoners, every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Similarly, the European Committee for the Prevention of Torture emphasizes that all prisoners without exception should be afforded the opportunity to have one hour of open-air exercise per day.[31] However, State practice indicates that these standards are not always observed. In Jordan, for example, a detainee was allowed outside of his solitary confinement cell for only one hour per week (A/HRC/4/33/Add.3, appendix, para. 21). In *Poltrotsky v. Ukraine*, the European Court of Human Rights found that a lack of opportunity for outdoor exercise, coupled with a lack of access to natural light, constitutes a violation of article 3 of the European Convention on Human Rights.[32]

53. Access to meaningful human contact within the prison and contact with the outside world are also essential to the psychological health of detainees held in solitary confinement, especially those held for prolonged periods of time. Within prisons this contact could be with health professionals, prison guards or other prisoners. Contact with the outside world could include visits, mail, and phone calls from legal counsel, family and friends, and access to reading material, television or radio. Article 17 of the International Covenant on Civil and Political Rights grants prisoners the right to family and correspondence. Additionally, the Standard Minimum Rules for the Treatment of Prisoners provide for various external stimuli

[28] Solitary Confinement of Prisoners and Detainees in Israeli Prisons, Joint Project of Adalah, Al Mezan (Gaza) and Physicians for Human Rights (Israel, June 2011).

[29] Shalev, op. cit., p. 42.

[30] Council of Europe, Committee for the Prevention of Torture, Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 20 December 2006 (CPT/Inf (2006)), p. 41.

[31] Council of Europe, "CPT Standards" (CPT/Inf/E (2002) 1 — Rev. 2010), sect. II, para. 48.

[32] *Poltrotsky v. Ukraine*, p. 146 (European Court of Human Rights, 2006-V).

(articles 21 on exercise and sport; 37-39 on contact with the outside world; 40 on books; 41 and 42 on religion; 71-76 on work; 77 and 78 on education and recreation; and 79-81 on social relations and after-care).

3. Social isolation

54. Solitary confinement reduces meaningful social contact to an absolute minimum. The level of social stimulus that results is insufficient for the individual to remain in a reasonable state of mental health.[33]

55. Research shows that deprived of a sufficient level of social stimulation, individuals soon become incapable of maintaining an adequate state of alertness and attention to their environment. Indeed, even a few days of solitary confinement will shift an individual's brain activity towards an abnormal pattern characteristic of stupor and delirium.[34] Advancements in new technologies have made it possible to achieve indirect supervision and keep individuals under close surveillance with almost no human interaction. The European Court of Human Rights has recognized that "complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason".[35]

56. According to the European Court of Human Rights, States should also take steps to reduce the negative impact of solitary confinement.[36] Where the damaging effects of solitary confinement on a particular individual are known, the regime cannot continue.[37] The conditions of confinement are relevant in this respect, because where conditions are beyond reproach, the Court considers it unlikely that the minimum threshold of severity to find a violation of article 3 will be reached.[38] Routine examination by doctors can be a factor in determining that there was no violation of article 3.[39]

G. Prolonged or indefinite solitary confinement

57. The use of prolonged or indefinite solitary confinement has increased in various jurisdictions, especially in the context of the "war on terror" and "a threat to national security". Individuals subjected to either of these practices are in a sense in a prison within a prison and thus suffer an extreme form of anxiety and exclusion, which clearly supersede normal imprisonment. Owing to their isolation, prisoners held in prolonged or indefinite solitary confinement can easily slip out of sight of

[33] Peter Scharff Smith, "The effects of solitary confinement on prison inmates", *Crime and Justice*, vol. 34 (2006), p. 449.

[34] Stuart Grassian, "Psychiatric Effects of Solitary Confinement", *Journal of Law and Policy*, vol. 22 (2006), p. 325.

[35] *Ilaşcu and others v. Moldova and Russia*, Application No. 48787/99, European Court of Human Rights (2004), para. 432.

[36] *Mathew v. Netherlands*, Application No. 24919/03, para. 202.

[37] *G.B. v. Bulgaria*, para. 85.

[38] *Valasinas v. Lithuania*, Application No. 44558/98, European Court of Human Rights, para. 112 (2001); *Ocalan v. Turkey*, para. 193.

[39] *Rohde v. Denmark*, para. 97.

justice, and safeguarding their rights is therefore often difficult, even in States where there is a strong adherence to rule of law.[40]

58. When a State fails to uphold the Standard Minimum Rules for the Treatment of Prisoners during a short period of time of solitary confinement, there may be some debate on whether the adverse effects amount to cruel, inhuman or degrading treatment or punishment or torture. However, the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture.

59. The feeling of uncertainty when not informed of the length of solitary confinement exacerbates the pain and suffering of the individuals who are subjected to it. In some instances, individuals may be held indefinitely during pretrial detention, increasing the risk of other forms of cruel, inhuman or degrading treatment or punishment or torture (CAT/C/DNK/CO/5, para. 14).

60. Most studies fail to specify the length of time after which solitary confinement becomes prolonged. While the term may be undefined, detainees can be held in solitary confinement from a few weeks to many years. For example, in Kazakhstan, individuals can be held in solitary confinement for more than two months (A/HRC/13/39/Add.3, para. 117). Some detainees have been held in solitary confinement facilities for years, without any charge and without trial, and in secret detention centres where isolation is used as an integral part of interrogation practices.[41] In a joint report on the situation of detainees at Guantánamo Bay, experts found that although 30 days of isolation was the maximum period permissible, some detainees were returned to isolation after very short breaks over a period of up to 18 months (E/CN.4/2006/120, para. 53).

61. There is no international standard for the permitted maximum overall duration of solitary confinement. In *A.B. v. Russia*, the European Court of Human Rights held that detaining an individual in solitary confinement for three years constituted a violation of article 3 of the European Convention on Human Rights.[42] By contrast, in the United States of America, it is reported that two prisoners have been held in solitary confinement in a Louisiana prison for 40 years after failed attempts at judicial appeal of the conditions of their confinement.[43] As explained in paragraph 26 above, the Special Rapporteur finds that solitary confinement exceeding 15 days is prolonged.

H. Psychological and physiological effects of solitary confinement

62. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions. Experts who have examined the impact of solitary confinement have found three common elements that are inherently present in solitary confinement —

[40] Peter Scharff Smith, "Solitary Confinement: An introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement", p. 1.

[41] Shalev, op. cit., p. 2.

[42] *A.B. v. Russia*, Application No. 1439/06, European Court of Human Rights, para. 135 (2010).

[43] "USA: The Cruel and Inhumane Treatment of Albert Woodfox and Herman Wallace", Amnesty International (2001).

social isolation, minimal environmental stimulation and "minimal opportunity for social interaction".[44] Research further shows that solitary confinement appears to cause "psychotic disturbances," a syndrome that has been described as "prison psychoses".[45] Symptoms can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm (see annex for a comprehensive list of symptoms).

63. Some individuals experience discrete symptoms while others experience a "severe exacerbation of a previously existing mental condition or the appearance of a mental illness where none had been observed before".[46] Still, a significant number of individuals will experience serious health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors.

I. Latent effects of solitary confinement

64. There is a lack of research into the latent effects of solitary confinement. While the acute effects of solitary confinement generally recede after the period of solitary confinement ends, some of the negative health effects are long term. The minimal stimulation experienced during solitary confinement can lead to a decline in brain activity in individuals after seven days. One study found that "up to seven days, the [brain activity] decline is reversible, but if deprived over a long period this may not be the case".[47]

65. Studies have found continued sleep disturbances, depression, anxiety, phobias, emotional dependence, confusion, impaired memory and concentration long after the release from isolation. Additionally, lasting personality changes often leave individuals formerly held in solitary confinement socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction.[48] Intolerance of social interaction after a period of solitary confinement is a handicap that often prevents individuals from successfully readjusting to life within the broader prison population and severely impairs their capacity to reintegrate into society when released from imprisonment.[49]

J. Vulnerable individuals

1. Juveniles

66. United Nations treaty bodies consistently recommend that juvenile offenders, children or minors should not be subjected to solitary confinement (CAT/C/MAC/CO/4, para. 8; CAT/OP/PRY/1, para. 185; CRC/C/15/Add.151, para. 41; and CRC/C/15/Add.232, para. 36 (a)). Juveniles are often held in solitary confinement either as a disciplinary measure, or to separate them from the adult inmate population, as international human rights law prohibits the intermingling of

[44] Stuart Grassian, "Psychiatric Effects of Solitary Confinement" (1993), p. 1.
[45] Ibid., p. 8.
[46] Ibid., p. 2.
[47] Ibid., p. 20.
[48] Shalev, op. cit., pp. 13 and 22.
[49] Stuart Grassian, "Psychiatric Effects of Solitary Confinement", pp. 332 and 333.

juvenile and adult prison populations.[50] Regrettably, solitary confinement as a form of punishment of juvenile detainees has been prevalent in States such as Jamaica (A/HRC/16/52/Add.3, para. 211), Paraguay (A/HRC/7/3/Add.3, appendix I, para. 46) and Papua New Guinea (A/HRC/16/52/Add.5, appendix). In regard to disciplinary measures, a report has indicated that solitary confinement does not reduce violence among juvenile offenders detained in the youth prison.[51]

2. Persons with disabilities

67. Persons with disabilities are held in solitary confinement in some jurisdictions as a substitute for proper medical or psychiatric care or owing to the lack of other institutional housing options. These individuals may not necessarily pose danger to others or to themselves, but they are vulnerable to abuse and often regarded as a disturbance to other prisoners and prison staff.[52]

68. Research has shown that with respect to mental disabilities, solitary confinement often results in severe exacerbation of a previously existing mental condition.[53] Prisoners with mental health issues deteriorate dramatically in isolation.[54] The adverse effects of solitary confinement are especially significant for persons with serious mental health problems which are usually characterized by psychotic symptoms and/or significant functional impairments.[55] Some engage in extreme acts of self-mutilation and even suicide.[54]

3. Lesbian, gay, bisexual and transgender

69. Lesbian, gay, bisexual and transgender individuals are often subjected to solitary confinement as a form of "protective custody".[56] Although segregation of such individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on their social regime, e.g., access to recreation, reading materials, legal counsel or medical doctors.

K. When solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment

70. Because of the absence of witnesses, solitary confinement increases the risk of acts of torture and other cruel, inhuman or degrading treatment or punishment. Given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and

[50] Article 37(c), Convention on the Rights of the Child; article 8(d), United Nations Standard Minimum Rules for the Treatment of Prisoners.

[51] Robert Wildeboer, "The Impact of Solitary Confinement in a Youth Prison", *Inside and Out* (Chicago, 2010).

[52] Shalev, op. cit., p. 26.

[53] Stuart Grassian, "Psychiatric Effects of Solitary Confinement"; Shalev, op. cit., p. 10.

[54] American Civil Liberties Union, "Abuse of the Human Rights of Prisoners in the United States: Solitary Confinement" (2011).

[55] Jeffrey L. Metzner, M.D., and Jamie Fellner, "Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics", *The Journal of the American Academy of Psychiatry and the Law*, vol. 38, No. 1, pp. 104-108 (2010).

[56] Heartland Alliance National Immigrant Justice Center, letter to the Special Rapporteur on torture dated 16 June 2011.

Political Rights, torture as defined in article 1 of the Convention against Torture or cruel, inhuman or degrading punishment as defined in article 16 of the Convention.

71. The assessment of whether solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment should take into consideration all relevant circumstances on a case-by-case basis. These circumstances include the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects. In this section, the report discusses a few circumstances where the use of solitary confinement constitutes torture and other cruel, inhuman or degrading treatment or punishment.

72. Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour and thus constitutes an act defined in article 1 or article 16 of the Convention against Torture, and a breach of article 7 of the International Covenant on Civil and Political Rights. This applies as well to situations in which solitary confinement is imposed as a result of a breach of prison discipline, as long as the pain and suffering experienced by the victim reaches the necessary severity.

73. While physical and social segregation may be necessary in some circumstances during criminal investigations, the practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation. When solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession, it amounts to torture as defined in article 1 or to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture, and to a breach of article 7 of the International Covenant on Civil and Political Rights.

74. Where the physical conditions of solitary confinement are so poor and the regime so strict that they lead to severe mental and physical pain or suffering of individuals who are subjected to the confinement, the conditions of solitary confinement amount to torture or to cruel and inhuman treatment as defined in articles 1 and 16 of the Convention, and constitute a breach of article 7 of the Covenant.

75. The use of solitary confinement can be accepted only in exceptional circumstances where its duration must be as short as possible and for a definite term that is properly announced and communicated. Given the harmful effects of indefinite solitary confinement, its potential use to extract information or confession during pretrial detention, and the fact that uncertainty prevents the use of remedies to challenge it, the Special Rapporteur finds that indefinite imposition of solitary confinement violates the right to due process of the concerned individual (article 9 of the Covenant, articles 1 or 16 of the Convention, and article 7 of the Covenant).

76. The Special Rapporteur asserts that social isolation is contrary to article 10, paragraph 3, of the International Covenant on Civil and Political Rights, which states that "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation" (General Assembly resolution 2200 (XXI), annex). Long periods of isolation do not aid the

rehabilitation or re-socialization of detainees (E/CN.4/2006/6/Add.4, para. 48). The adverse acute and latent psychological and physiological effects of prolonged solitary confinement constitute severe mental pain or suffering. Thus the Special Rapporteur concurs with the position taken by the Covenant in General Comment No. 20 that prolonged solitary confinement amounts to acts prohibited by article 7 of the Covenant, and consequently to an act as defined in article 1 or article 16 of the Convention. For these reasons, the Special Rapporteur reiterates that, in his view, any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances. He calls on the international community to agree to such a standard and to impose an absolute prohibition on solitary confinement exceeding 15 consecutive days.

77. With respect to juveniles, the Declaration of the Rights of the Child and the Preamble of the Convention on the Rights of the Child state that, given their physical and mental immaturity, juveniles need special safeguards and care, including appropriate legal protection. Article 19 of the Convention on the Rights of the Child (General Assembly resolution 44/25) requires States Parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ..." In its General Comment No. 8, the Committee on the Rights of the Child indicated that "There is no ambiguity: 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children" (CRC/C/GC/8, para. 18). Paragraph 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in resolution 45/113 of 14 December 1990, states that "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ... solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned" (see also CRC/C/GC/10, para. 89). Thus the Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.

78. The right of persons with mental disabilities to be treated with humanity and with respect for the inherent dignity guaranteed under article 10 of the Covenant should be interpreted in light of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted by the General Assembly on 17 December 1991 (resolution 46/119, annex). Given their diminished mental capacity and that solitary confinement often results in severe exacerbation of a previously existing mental condition, the Special Rapporteur believes that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment and violates article 7 of the Covenant and article 16 of the Convention.

IV. Conclusions and recommendations

Conclusions

79. **The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse**

effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

80. Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can amount to a breach of article 7 of the International Covenant on Civil and Political Rights, and to an act defined in article 1 or article 16 of the Convention against Torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.

81. Considering the severe mental pain or suffering solitary confinement may cause when used as a punishment, during pretrial detention, indefinitely or for a prolonged period, for juveniles or persons with mental disabilities, it can amount to torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur is of the view that where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering, it amounts to cruel, inhuman or degrading treatment or punishment.

Recommendations

82. The Special Rapporteur calls upon States to respect and protect the rights of persons deprived of liberty while maintaining security and order in places of detention. He recommends that States conduct regular reviews of the system of solitary confinement. In this context, the Special Rapporteur reiterates that States should refer to the Istanbul Statement on the Use and Effects of Solitary Confinement as a useful tool in efforts to promote the respect and protection of the rights of detainees.

83. The Special Rapporteur calls upon States to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights. The Special Rapporteur refers to the Standard Minimum Rules for the Treatment of Prisoners and recommends that States increase the level of psychological, meaningful social contact for detainees while in solitary confinement.

84. The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.

85. States should take necessary steps to put an end to the practice of solitary confinement in pretrial detention. The use of solitary confinement as an extortion technique during pretrial detention should be abolished. States should adopt effective measures at the pretrial stage to improve the efficiency of investigation and introduce alternative control measures in order to segregate individuals, protect ongoing investigations, and avoid detainee collusion.

86. **States should abolish the use of solitary confinement for juveniles and persons with mental disabilities. Regarding disciplinary measures for juveniles, the Special Rapporteur recommends that States should take other measures that do not involve the use of solitary confinement. In regard to the use of solitary confinement for persons with mental disabilities, the Special Rapporteur emphasizes that physical segregation of such persons may be necessary in some cases for their own safety, but solitary confinement should be strictly prohibited.**

87. **Indefinite solitary confinement should be abolished.**

88. **It is clear that short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment; it can, however, be a legitimate device in other circumstances, provided that adequate safeguards are in place. In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.**

89. **The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He emphasizes that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. These safeguards reduce the chances that the use of solitary confinement will be arbitrary or excessive, as in the case of prolonged or indefinite confinement. They are all the more important in circumstances of detention where due process protections are often limited, as in administrative immigration detention. Minimum procedural safeguards should be interpreted in a manner that provides the greatest possible protection of the rights of detained individuals. In this context, the Special Rapporteur urges States to apply the following guiding principles and procedural safeguards.**

Guiding principles

90. **Throughout the period of detention, the physical conditions and prison regime of the solitary confinement, and in particular the duration of confinement, must be proportional to the severity of the criminal or disciplinary infraction for which solitary confinement is imposed.**

91. **The physical conditions and prison regime of solitary confinement must be imposed only as a last resort where less restrictive measures could not achieve the intended disciplinary goals.**

92. **Solitary confinement must never be imposed or allowed to continue except where there is an affirmative determination that it will not result in severe pain or suffering, whether physical or mental, giving rise to acts as defined in article 1 or article 16 of the Convention against Torture.**

93. **All assessments and decisions taken with respect to the imposition of solitary confinement must be clearly documented and readily available to the detained persons and their legal counsel. This includes the identity and title of the authority imposing solitary confinement, the source of his or her legal attributes to impose it, a statement of underlying justification for its imposition, its duration, the reasons for which solitary confinement is determined to be appropriate in accordance with the detained person's mental and physical health, the reasons for which solitary confinement is determined to be**

proportional to the infraction, reports from regular review of the justification for solitary confinement, and medical assessments of the detained person's mental and physical health.

Internal safeguards

94. From the moment that solitary confinement is imposed, through all stages of its review and decisions of extension or termination, the justification and duration of the solitary confinement should be recorded and made known to the detained person. Additionally, the detained person should be informed of what he or she must do to be removed from solitary confinement. In accordance with rule 35 of the Standard Minimum Rules for the Treatment of Prisoners, the detained person must receive this information in plain language that he or she understands. This information must additionally be provided to any legal representative of the detained person.

95. A documented system of regular review of the justification for the imposition of solitary confinement should be in place. The review should be conducted in good faith and carried out by an independent body. Any change in the factors that justified the imposition of solitary confinement should immediately trigger a review of the detained person's solitary confinement. All review processes must be documented.

96. Persons held in solitary confinement must be provided with a genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative review. At the outset of the imposition of solitary confinement, detained persons must be informed of their alleged criminal or disciplinary infraction for which solitary confinement is being imposed and must immediately have an opportunity to challenge the reasons for their detention. Following the imposition of solitary confinement, detained persons must have the opportunity to file a complaint to prison management through an internal or administrative complaints system.

97. There shall be no limitations imposed on the request or complaint, such as requiring evidence of both mental or emotional suffering and physical suffering. Prison officials have an obligation to address all requests or complaints promptly, informing the detained person of the outcome. All internal administrative findings must be subject to external appeal through judicial processes.

External safeguards

98. Detained persons held in solitary confinement must be afforded genuine opportunities to challenge both the nature of their confinement and its underlying justification through the courts of law. This requires a right to appeal all final decisions by prison authorities and administrative bodies to an independent judicial body empowered to review both the legality of the nature of the confinement and its underlying justification. Thereafter, detained persons must have the opportunity to appeal these judgements to the highest authority in the State and, after exhaustion of domestic remedies, seek review by regional or universal human rights bodies.

99. **Individuals must have free access to competent legal counsel throughout the period in which they are held in solitary confinement. Where necessary to facilitate complete and open communication between a detainee and his or her legal counsel, access to an interpreter must be provided.**

100. **There should be a documented system of regular monitoring and review of the inmate's physical and mental condition by qualified medical personnel, both at the initiation of solitary confinement and on a daily basis throughout the period in which the detained person remains in solitary confinement, as required by rule 32, paragraph 3, of the Standard Minimum Rules for the Treatment of Prisoners. Medical personnel monitoring detained persons should have specialized training in psychological assessment and/or the support of specialists in psychology. Additionally, medical personnel must be independent and accountable to an authority outside of the prison administration. Preferably, they should belong to the general national health structure. Any deterioration of the inmate's mental or physical condition should trigger a presumption that the conditions of confinement are excessive and activate an immediate review.**

101. **Medical personnel should additionally inspect the physical conditions of the inmate's confinement in accordance with article 26 of the Standard Minimum Rules for the Treatment of Prisoners. Relevant considerations include the level of hygiene and cleanliness of the facility and the inmate, heating, lighting and ventilation of the cell, suitability of clothing and bedding, adequate supply of food and water and observance of the rules concerning physical exercise.**

Annex

Effects of solitary confinement

Many symptoms may present themselves in individuals held in solitary confinement, both concurrent with their solitary confinement and after the period of solitary confinement has terminated. The following list prepared by Dr. Sharon Shalev[a] demonstrates a range of possible symptoms.

Anxiety, ranging from feelings of tension to full-blown panic attacks

- Persistent low level of stress
- Irritability or anxiousness
- Fear of impending death
- Panic attacks

Depression, varying from low mood to clinical depression

- Emotional flatness/blunting — loss of ability to have any "feelings"
- Mood swings
- Hopelessness
- Social withdrawal; loss of initiation of activity or ideas; apathy; lethargy
- Major depression

Anger, ranging from irritability to full-blown rage

- Irritability and hostility
- Poor impulse control
- Outbursts of physical and verbal violence against others, self and objects
- Unprovoked anger, sometimes manifested as rage

Cognitive disturbances, ranging from lack of concentration to confused state

- Short attention span
- Poor concentration
- Poor memory
- Confused thought processes; disorientation

Perceptual distortions, ranging from hypersensitivity to hallucinations

- Hypersensitivity to noises and smells
- Distortions of sensation (e.g., walls closing in)
- Disorientation in time and space

[a] Sharon Shalev, *A Sourcebook on Solitary Confinement* (London, Mannheim Centre for Criminology, 2008), pp. 15-17; also Peter Scharff Smith, "The effects of solitary confinement on prison inmates: a brief history and review of the literature", *Crime and Justice*, vol. 34 (2006), p. 441.

- Depersonalization/derealization
- Hallucinations affecting all five senses (e.g., hallucinations of objects or people appearing in the cell, or hearing voices when no one is actually speaking)

Paranoia and psychosis, ranging from obsessional thoughts to full-blown psychosis

- Recurrent and persistent thoughts (ruminations), often of a violent and vengeful character (e.g., directed against prison staff)
- Paranoid ideas — often persecutory
- Psychotic episodes or states: psychotic depression, schizophrenia

Self-harm, self-directed aggression

- Self-mutilation and cutting
- Suicide attempts

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The right to education

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to education, Kishore Singh, submitted in accordance with Human Rights Council resolutions 8/4 and 17/3.

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Interim report of the Special Rapporteur on the right to education

Summary

The present report is submitted pursuant to Human Rights Council resolutions 8/4 and 17/3. It is devoted to the issue of domestic financing of basic education. It details human rights obligations for financing education and provides practical examples of national legal frameworks that ensure domestic financing. The report also contains an update on the situation of education in emergencies, pursuant to General Assembly resolution 64/290. The Special Rapporteur underlines that the attention and funding dedicated to education in emergencies continue to be insufficient and inadequate, and calls for more investment in preventive efforts and for a better protection of education during armed conflict.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 8/4 and 17/3. It addresses State obligations regarding public financing of basic education and the importance of legal frameworks ensuring domestic financing of such education. It also contains an update on the situation of education in emergencies, in accordance with General Assembly resolution 64/290.

2. Following his appointment by the Human Rights Council, Kishore Singh assumed his functions as Special Rapporteur in August 2010. Since then, he reported to the Human Rights Council at its seventeenth session, in June 2011. In his first report[1] he outlined priority areas to be examined in the course of his mandate and addressed in more detail State obligations to ensure equality of opportunity in education. He also reported on his first country mission to Senegal,[2] which was conducted in January 2011.

3. During his first year of work, the Special Rapporteur participated in a number of public events on education and worked to establish collaboration with States, international organizations and non-governmental organizations. The Special Rapporteur recently participated in two regional preparatory meetings of the Economic and Social Council, in Thailand in March and in Togo in April. In July, the Special Rapporteur participated in the annual ministerial review held during the High-Level Segment of the substantive session of the Council, which focused on internationally agreed goals and commitments with regard to education.

II. Financing basic education

4. The right to education is an internationally recognized right and the provision of adequate financial resources is essential to its realization. Article 26 of the Universal Declaration of Human Rights recognizes the right of everyone to education, which shall be free, at least in the elementary and fundamental stages. Since the adoption of the Universal Declaration of Human Rights, States have undertaken international legal obligations for the fulfilment of the right to education through various human rights instruments[3] and assumed the responsibility of providing the resources required for its realization.

5. Resource constraints, however, remain a major barrier to the realization of the right to education. Prospects for achieving the targets of millennium development goals 2 (Ensuring that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling) and 3 (Eliminating gender disparity in all levels of education no later than 2015) are bleak on account of a

[1] A/HRC/17/29 and Corr.1.

[2] A/HRC/17/29/Add.2.

[3] International Covenant on Economic, Social and Cultural Rights, articles 13 and 14, and the UNESCO Convention against Discrimination in Education comprehensively provide this right, which is also guaranteed by articles 28 and 29 of the Convention on the Rights of the Child, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 10, 11 and 13 of the Convention on the Elimination of All Forms of Discrimination against Women, articles 30, 43 and 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and article 24 of the Convention on the Rights of Persons with Disabilities.

dearth of resources. The assessment prepared for the 2010 High-level Plenary Meeting of the General Assembly on the Millennium Development Goals underlined the need for scaling up budgets and providing enhanced resources to accelerate progress in meeting those targets.[4] The Education for All Global Monitoring Reports in recent years have consistently pointed to insufficient funding for education. More recently, public expenditure cuts as a consequence of the global financial crisis have threatened to decrease support to the education sector, possibly jeopardizing recent advances.[5] For instance, 7 of 18 low-income countries reduced spending on education in 2009; those countries alone had 3.7 million children out of school.[6]

6. In view of the critical need to overcome resource constraints for the realization of the right to education and for the achievement of internationally agreed goals such as the millennium development goals and Education for All, in the present report the Special Rapporteur recalls States' obligations regarding the provision of domestic resources for basic education and presents examples of national legal instruments adopted to secure adequate financial resources for education.

A. Human rights obligations for financing education

7. In accordance with international human rights treaties, States are responsible for providing resources to ensure the enjoyment of human rights. Providing the necessary resources for the enjoyment of the right to education is all the more important, given that the enjoyment of this right is essential for the exercise of all other human rights. It deserves high priority in public investment, as both the individual and society are its beneficiaries.

8. States' obligations to ensure the provision of full resources to overcome constraints to the realization of the right to education consistently figure in the concluding observations adopted by the United Nations human rights treaty bodies. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have often expressed concern about declining educational standards due to lack of State investment in education and have recommended that the resources allocated to the education sector should be increased. The Committee on the Elimination of Discrimination against Women has also systematically urged States to increase investment in education as a fundamental human right and as a basis for the empowerment of women. Recommendations resulting from the Universal Periodic Review process of the Human Rights Council for the provision of increased resources to education further confirm the wide recognition of the central relevance of financing education for the fulfilment of human rights obligations.[7]

9. Commitments to finance education are also present in the International Labour Organization (ILO)/United Nations Educational, Scientific and Cultural Organization (UNESCO) Recommendation concerning the Status of Teachers (1966), which

[4] A/64/665, para. 71 (b).

[5] Several publications of the UNESCO International Institute for Educational Planning on the financing of education have also addressed this issue.

[6] UNESCO, Education for All Global Monitoring Report 2011, *The Hidden Crisis: Armed Conflict and Education*, p. 12.

[7] For example, recommendations addressed in 2009 and 2010 to Bolivia, Cambodia, Chile, the Democratic Republic of the Congo, the Dominican Republic, Ethiopia and Spain.

recognizes the need for high priority to be given in all countries to setting aside, within the national budget, an adequate proportion of national income for the development of education.[8] In fact, the right to education is an integral part of the institutional mission of UNESCO, and Member States have the obligation of providing the necessary resources for its realization.

1. Ensuring progressive realization and avoiding retrogression

10. The concept of the progressive realization of economic, social and cultural rights, including the right to education, recognizes that their realization often extends over time. It also implies that measures to promote the fulfilment of a right must be adopted with a view to ensuring a sustainable expansion of its enjoyment across the country. When referring to the progressive realization of the right to education, the Committee on Economic, Social and Cultural Rights emphasized that States parties to the International Covenant on Economic, Social and Cultural Rights have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realization of that right. It also underlined: "there is a strong presumption of impermissibility of any retrogressive measures".[9] In that sense, support to education must be driven by consideration of the need to ensure the gradual expansion of the education sector.

11. Various United Nations human rights treaty bodies have expressed concern regarding the possible impact of economic crises on the enjoyment of human rights. The Committee on Economic and Social Rights specified that "even in times of severe resources constraints, whether caused by a process of adjustment, of economic recession or by other factors, the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes".[10] More recently, the Human Rights Council adopted a resolution in which it called upon States to note that the global economic and financial crises did not diminish the responsibility of national authorities in the realization of human rights.[11]

2. Fulfilling core obligations

12. States' obligations to satisfy, as a matter of priority, "minimum essential levels of each of the rights" recognized in the International Covenant on Economic, Social and Cultural Rights, also referred to as "minimum core obligations", have immediate effect. Core obligations relating to the right to education include the obligation to provide primary education free of charge for all in accordance with article 13.2 (a) and the obligation to adopt and implement a national educational strategy that includes the provision of secondary, higher and fundamental education.[12] Article 14 of the Covenant further underlines the core obligation to adopt a plan of action aimed at securing the progressive implementation of the right to compulsory primary education, free of charge, within a reasonable time frame.

[8] ILO/UNESCO Recommendation concerning the Status of Teachers, para. 10 (1).

[9] Committee on Economic, Social and Cultural Rights, General Comment No. 13, paras. 44 and 45.

[10] Committee on Economic, Social and Cultural Rights, General Comment No. 3, para. 12.

[11] Human Rights Council resolution S-10/1 of 23 February 2009.

[12] See Committee on Economic, Social and Cultural Rights, General Comment No. 13, para. 52.

3. Ensuring the provision of maximum available resources

13. The International Covenant on Economic, Social and Cultural Rights,[13] the Convention on the Rights of the Child[14] and the Convention on the Rights of Persons with Disabilities[15] are all explicit about States parties' obligations to provide maximum available resources to ensure the enjoyment of human rights.

14. In its general comment on the nature of States parties' obligations, the Committee on Economic, Social and Cultural Rights underlined that even where the available resources are inadequate for the realization of economic and social rights, the obligation remains for a State party to strive to ensure the widest possible enjoyment of those rights under the prevailing circumstances, to monitor the extent of their realization, and to devise strategies and programmes for their promotion.[16] Mentions of resources refer to financing, but not exclusively.

4. Providing international assistance and cooperation

15. Under the International Covenant on Economic, Social and Cultural Rights, States have an obligation to take steps individually and through international assistance and cooperation, to the maximum extent of their available resources, with a view to achieving the progressive realization of rights. The specific obligations of the international community towards financing the right to education have been underlined by the Committee on Economic, Social and Cultural Rights.[17] At the same time, States requiring international assistance must seek and manage aid in accordance with human rights norms and standards.

16. By virtue of the principle of international solidarity, least developed countries, faced with serious financial constraints, deserve such assistance, a priori. Development partners must provide "financial and technical support" to those countries "to implement their national education plans and programmes, including increased accessibility in rural and remote areas". For their part, the least developed countries need to strengthen their national education systems.[18]

17. A number of political declarations on international aid underline the need for the adequate management of domestically available resources by recipient countries, which must contribute to the enhanced sustainability of development efforts. For example, through the 2005 Paris Declaration on Aid Effectiveness, partner countries commit themselves to "intensify efforts to mobilize domestic resources, strengthen fiscal sustainability and create an enabling environment for public and private investment".[19] Similarly, the United Nations Global Compact launched by the

[13] Article 2.1.

[14] Article 4.

[15] Article 4.2.

[16] Committee on Economic, Social and Cultural Rights, General Comment No. 3, para. 11.

[17] Committee on Economic, Social and Cultural Rights, General Comment No. 11 (1999), para. 9, and General Comment No. 3 (1990), para. 14.

[18] Programme of Action for the Least Developed Countries for the Decade 2011-2020, adopted by the Fourth United Nations Conference on the Least Developed Countries, held in Istanbul from 9 to 13 May 2011 (A/CONF.219/3/Rev.1), para. 74.2 (a) and 1 (c), and para. 72.1 (c).

[19] Paris Declaration on Aid Effectiveness, Part I: Statement of Resolve, para. 25. The Statement of Resolve reflects commitment to strengthening partner countries' national development strategies and associated operational frameworks (e.g. planning, budget, and performance assessment frameworks) and "defining measures and standards of performance".

Secretary-General at the International Conference on Financing for Development, held in Monterrey, Mexico in 2002, provides that if developing countries improve governance and achieved results, the donors would come up with the necessary funding to reach the millennium development goals.[20] The Education for All Fast Track Initiative, the most important mechanism of international assistance for education, was designed to assist countries to achieve millennium development goal 2 and the Education for All goals, and pays particular attention to the adequate management of domestic resources by recipient countries.

18. In 2006, States and international organizations involved in development aid established the Leading Group on Innovative Financing for Development to devise additional international financing mechanisms to promote global development. The International Task Force on Innovative Financing for Education, established as part of that initiative, is currently discussing a number of alternatives to enhance funding for education,[21] including the mobilization of domestic resources as well as international aid.[22]

5. Relevant global political commitments

19. Commitments to finance primary education are expressed in numerous international declarations and are at the heart of major global campaigns. At the World Education Forum in 2000, Governments, along with other stakeholders, pledged themselves to a strategy, inter alia, to "mobilize strong national and international political commitment for education for all, develop national action plans and enhance significantly investment in basic education".[23] Those pledges include the commitment that "political will must be underpinned by resources". It is thus incumbent upon Governments to provide domestic resources for achieving Education for All. Access to education, as a basic human right, is considered a "strategic development investment".[24]

20. The Millennium Development Goals should also be construed as a reaffirmation of obligations expressed in human rights treaties and, therefore, of the responsibility of Governments to provide financial resources for education. Millennium development goal 2 reflects the obligation to ensure universal primary education, including the obligation to ensure that no direct or indirect costs deprive children of their right to education. Millennium development goal 3 reflects the obligation to ensure gender parity at all levels of education, including the duty to provide financial resources for that purpose.

[20] The underlying idea of debt swaps in education is the cancellation of external debt in exchange for the debtor Government's commitment to mobilize domestic resources for spending on education, for example.

[21] See Leading Group on Innovative Financing for Development, "2+3=8: Innovating in financing education: Report of the Writing Committee to the Task Force on Innovative Financing for Education", 2010.

[22] Discussed at the second meeting of the Education International Task Force of the Leading Group on Innovative Financing, Paris, 17 June 2010.

[23] Dakar Framework for Action, adopted at the World Education Forum, 2000, para. 8 (i).

[24] World Bank Group Education Strategy 2020, *Learning for All: Investing in People's Knowledge and Skills to Promote Development*, Executive summary, p. 1.

B. National legal framework for financing basic education

21. It is incumbent upon States to incorporate in domestic law their international obligations to finance education. Provisions for public funding of education in a country's constitution, national legislation and educational policies are crucial to give effect to obligations relating to the realization of the right to education. The Special Rapporteur considers that the adoption of a national legal framework for financing education indicates the importance and priority given to the right to education.

22. Through law reforms promoted in the context of the Education for All process, one can witness the emergence of the right to basic education in continuum with the right to primary education in national legal frameworks. As a result, States recognize their duty to guarantee universal access to basic education. The 2009 Commonwealth Heads of Government Meeting, for example, called on all Commonwealth countries to commit further resources to basic education.[25]

1. Constitutional provisions

23. Constitutional provisions on financing education provide a firm basis for developing national legislation and education policies. Such provisions exist in several countries that have different criteria for determining minimum levels of investment in education.

24. Some constitutions establish a minimum level of resources that must be committed to education as a proportion of tax revenues. The Constitution of Brazil provides in article 212 that "the Union shall apply annually not less than 18 per cent of its tax revenues, and the States, the Federal District, and Counties at least 25 per cent of the tax revenues, including revenues resulting from transfers, for the maintenance and development of education".

25. Other constitutions establish a minimal share for education in the overall national budget. The Constitution of Indonesia, as revised in 2002, establishes in article 31 (4) that the State shall prioritize the budget for education to a minimum of 20 per cent of the State budget and of the regional budgets to fulfil the needs of implementation of national education.

26. Other constitutions use the national gross domestic product (GDP) to calculate the minimum support required for education. The 2008 Constitution of Ecuador provides that public expenditure for education shall be 6 per cent of GDP. The 1997 Constitution of Costa Rica contains similar provisions.

27. Finally, other constitutions lay down the obligation to prioritize investment in education. The Constitution of Ethiopia provides that "the State has the obligation to allocate ever increasing resources to provide to the public health, education and other social services" (art. 41 (4)). Similarly, the Constitutions of the Philippines and of Viet Nam provide that the State shall give priority investment to education.

[25] Communiqué of the Commonwealth Heads of Government Meeting, held in Trinidad and Tobago from 27 to 29 November 2009, para. 89.

2. National legislation and budgetary allocation for basic education

28. The Committee on Economic, Social and Cultural Rights has underlined the importance of national legislation for giving effect to State obligations.[26] National legislation developed in many countries, often in the context of the Education for All process, contains important provisions for financing basic education, establishing minimal levels of financial support and responsibilities in that regard. Recent developments that can be cited as practical examples are described below.

29. In South Africa, basic education is a constitutional right. The South African Schools Act, 1996 provides that "subject to the Constitution and this Act, the Minister must determine norms and minimum standards for the funding of public schools after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance" (para. 35).

30. In Nigeria, the Act on Compulsory Free Universal Basic Education, 2004, which provides for nine years of compulsory basic education, establishes the Universal Basic Education Commission, entrusted with the task of implementing the right to basic education and with the provision of resources. The universal basic education programme is financed by 2 per cent of the Consolidated Revenue Fund.

31. In Argentina, the National Education Law No. 26.206 of 2007 provides that the resources for education shall be increased to 6 per cent of GDP in 2010. The Law lays down a right to compulsory schooling from the age of 5 until the completion of secondary education (art. 16).

32. In Mexico, the General Law on Education, revised in 2003, provides for 8 per cent of GDP to be allocated to public education and education services (art. 25). It is reported that this contributed to an increase in support to education.

33. In India, policies for financing basic education have emanated from national legislation, as exemplified by measures being taken for the implementation of the Right of Children to Free and Compulsory Education Act, 2009. An exponential increase in expenditure on education in the country's five-year plan is reported as a consequence of this framework.

34. In Senegal, Law 91-22 of 1991 on the orientation of national education, modified in 2004 by Law 2004-37, institutes compulsory schooling for all children aged between 6 and 16, which is free in all public schools. The recognition of the duty to provide education was reportedly followed by an increase in national investment to nearly 40 per cent of the national budget.

35. In Kenya, the adoption of the Children's Act of 2001 and of education strategies for the 21st century underlined the core commitment to universalize primary education. It is reported that resource allocations to education have increased significantly as a result of that commitment.

36. In China, the Compulsory Education Law, as amended in 2006, provides for nine years of basic education. It guarantees that basic education will be financed by the State Council and local people's governments. The National Plan for Medium

[26] Committee on Economic, Social and Cultural Rights, General Comment No. 3, para. 3: "The means which should be used in order to satisfy the State obligation to take steps are stated in article 2 (1) to be 'all appropriate means, including particularly the adoption of legislative measures.'"

and Long-term Education Reform and Development (2010-2020) recognizes that funding of education is a basic and strategic investment. Under the plan, it is proposed to raise public expenditure on education to 4 per cent of GDP by 2012.

37. Some legal frameworks devolve financing responsibilities to subnational entities. In Iceland, the Compulsory School Act No. 19 of 2008, provides that the municipalities shall finance the capital investment costs of compulsory education. In Thailand, the National Education Act, 1999 authorizes the State and local bodies to levy educational taxes as appropriate. Some countries having a federal system make specific financing arrangements in terms of the competence and responsibility of federal and provincial (state) authorities.[27]

3. Mobilization of additional resources for education

38. Legal instruments can enable the mobilization of additional resources for education. A 2 per cent education cess on all central taxes levied in India has resulted in an important expansion of funding for the elementary education sector. Similarly, the National Plan of China, mentioned above, proposes an education surtax accounting for 3 per cent of the value-added tax, to be spent specifically on educational undertakings. Mobilizing additional resources through such special taxation schemes is crucial in reinforcing budgetary provisions.[28]

39. Public investment in basic education can be enhanced by mobilizing additional resources from contributions of local bodies, private donors and communities through institutional mechanisms that supplement Government funding. For example, the Tanzania Education Authority, under the Education Fund Act, 2001 can "receive gifts, donations, grants or other moneys on behalf of the Fund". Similar mechanisms exist, for instance, in India with the Bharatiya Shiksa Kosh (education fund) and in Nigeria with the Education Tax Fund. It must be ensured that the modus operandi of all such institutional mechanisms is fully respectful of transparency and accountability.

40. The present report focuses only on financing education through public resources. However, it is clear that the private sector can complement State initiatives in providing education by entering into partnerships with Governments for equitably sharing responsibilities.[29] It should, however, be ensured that such partnerships operate within a legal framework that requires full compliance with human rights norms and with standards of quality education.

C. Concerns requiring further consideration

41. As described above, human rights instruments clearly establish State obligations to finance education. Translating these obligations into practice requires a number of legal and policy instruments to ensure that investment in education is

[27] For instance, in India, within the framework of the Right of Children to Free and Compulsory Education Act, 2009, the Federal Government will contribute 65 per cent of the public funding of education as against the 35 per cent contribution of States.

[28] In this context, it is important to note that reflections on innovative financing in education include several proposals for new mechanisms intended to offset the investment deficit in education and sustain funding over the long term.

[29] Jakarta Declaration, adopted at the International Conference on the Right to Basic Education as Fundamental Human Right and Legal Framework for its Financing, December 2005.

predictable and sustainable and that financial resources are made available and properly utilized in a timely manner to ensure the broadest possible enjoyment of the right to education. Adopting a legal framework for financing education offers an important tool for fostering accountability, as action affecting public investment in education can become the subject of domestic legal action.[30]

42. Below, the Special Rapporteur mentions some core concerns that deserve further attention in the implementation of legal instruments for financing basic education.

1. Securing adequate financial resources for basic education

43. In order to overcome resource constraints on the Education for All agenda, the High-level Group on Education for All has advocated for ensuring that a minimum proportion of national budgets (15 to 20 per cent) or share of GDP (4 to 6 per cent) is dedicated to education.[31] As described above, mechanisms establishing that a proportion of overall public expenditure or the revenue from specific taxes is earmarked to education have already accomplished results in the expansion of funding for education in various countries. It is clear that an evaluation of the effectiveness of those mechanisms over time will depend on the overall functioning of fiscal and budgetary policy mechanisms in place in a given State.

2. Ensuring adequate utilization of resources for education

44. While allocating the maximum amount of domestic resources to education is crucial, it is of equally critical importance to ensure their effective and optimal utilization.[32] Beyond securing funds for education, legal instruments protecting the right to education can further guide State action for the utilization of resources assigned to education in accordance with human rights obligations.

45. Bearing in mind the obligation to ensure universal primary education and commitments to meet the Millennium Development Goals and the Education for All agenda, public funding for primary and basic education should be ensured as a matter of priority.

46. Evaluation of the effectiveness of financial management in the area of education requires attention to the core principles of equality and non-discrimination. In the allocation of funds to the various education levels and regions within a territory, prevailing socio-economic disparities and their implications for the education sector must be taken into consideration. In situations where schools are funded through subnational budgets, it is also necessary to ensure

[30] For example, the Constitutional Court of Indonesia passed a resolution in 2008 reminding the lawmaker to meet the constitutional obligation to provide at least 20 per cent of the national budget to education in the fiscal year 2009. The Government accordingly was obliged to increase the budget for education.

[31] The High-level Group on Education for All, since its Fifth Meeting, in 2005, has consistently been recommending such measures to Governments. At its Tenth Meeting, held in March 2011, the High-level Group called upon national Governments to allocate at least 6 per cent of gross national product (GNP) and/or 20 per cent of public expenditure to education and to ensure the cost-effective use of resources.

[32] Committee on the Rights of the Child, Day of General Discussion on "Resources for the rights of the child — responsibility of States", 21 September 2007.

that differences in revenues collected locally do not result in inequalities between regions.

47. Specific resources must be ensured to address the root causes of the exclusion from education of girls, those living in poverty or with disabilities, ethnic and linguistic minorities, migrants, and other marginalized and disadvantaged groups. Specific measures targeting important obstacles to education must be considered, including the abolition of school fees and the provision of subsidies for other costs, such as textbooks, uniforms and transportation.[33] Temporary special measures to provide financial support to such groups through affirmative action have a normative basis in international human rights treaties.[34] Particular attention must be paid to the principles of transparency and accountability in the management of education budgets.

3. Responding to quality imperatives

48. Finally, frameworks regulating education expenditure must give foremost consideration to the improvement of quality education, recognizing the centrality of education in people's lives and the empowering role of quality education. Often education budgets are fully consumed by recurring expenditure, mostly teachers' salaries, which, unfortunately are often very low and result in difficulties in attracting qualified professionals.[35] Investment in essential areas such as the development of pedagogic materials, the training of teaching personnel and improving working conditions remains neglected. The Special Rapporteur intends to examine this question in another thematic report, on quality education.

D. Conclusion and recommendations

49. **States cannot fulfil their international obligations concerning the realization of the right to education unless they provide the necessary resources for education and make them available on a consistent and predictable basis. For this purpose, national legal and policy frameworks ensuring investment in education play a crucial role. They are also essential in accelerating sustainable progress towards achieving the Millennium Development Goals and moving the Education for All agenda forward. Education is indeed the best investment a country can make and deserves the highest priority in resource allocation. As a global public good of paramount importance, education should receive strong commitments from global leaders for its funding.**[36]

50. **In that spirit, the Special Rapporteur provides the following recommendations:**

[33] A/64/665, para. 71 (b).

[34] Article 13 of the International Covenant on Economic, Social and Cultural Rights provides for "an adequate fellowship system", inter alia, with respect to achieving full realization of the right to education. Similarly, the UNESCO Convention against Discrimination in Education lays down the criterion of "merit or need" with respect to "the grant of scholarships or other forms of assistance to pupils" (art. 3 (c)).

[35] Teachers' salaries have been doubled in Ecuador under the Law on Intercultural Education, 2011.

[36] Fourth meeting of the International Task Force on Innovative Financing for Education, UNESCO Headquarters, Paris, 4 February 2011.

(a) Securing investment in education through domestic legal frameworks

51. **A national law whereby at least a minimum level of investment is indispensably assured for quality education is highly necessary. Following up on the recommendations made consistently by the High-level Group on Education for All, the establishment of an internationally accepted norm, whereby a certain minimum percentage of GNP (4-6 per cent) or of the national budget (15-20 per cent) is allocated to education may be valuable in providing the basis for developing a national legal and policy framework.**

(b) Devising strategies to increase resource allocation

52. **It is of crucial importance for countries to devise new approaches to resource allocation and its utilization. To enhance investment in education as a national priority, budget lines for education can be provided for in various ministries concerned with social development (ministries of social welfare, child and women's development, labour, health, etc.). At the same time, broadening the tax base is important for creating more budgetary resources.**

(c) Promoting public debate and exchange of experiences

53. **Education does not often receive the priority it deserves at the national level in terms of budget allocations. To ensure that education receives priority attention, it would be expedient to promote public dialogue among ministers of education and ministers of finance and planning on the necessary steps to secure maximum funding for education. An exchange of ideas and approaches among countries regarding legal and policy frameworks for financing education would enable national authorities to draw upon available experiences and practical examples from a comparative perspective and could provide insight into new avenues for investment in education.**

(d) Giving particular attention to the financing of basic education in providing technical assistance to Governments for the development of national legal frameworks

54. **Pursuant to Human Rights Council resolution 17/3, UNESCO and UNICEF should be encouraged to continue to provide technical assistance to Member States for modernizing/developing national legislation. In this process, the importance of provisions for the financing of basic education should be emphasized.**

(e) Responding to quality imperatives

55. **Budgetary provision for quality education is scarce as almost the totality of resources assigned for education go to recurring expenditure. A paradigm shift is required to respond to quality imperatives, which remains a daunting challenge.**

III. Update on education in emergencies

56. The General Assembly, in its resolution 64/290, requested the Special Rapporteur to include in his next interim report to the General Assembly at its sixty-sixth session an update to the report on the right to education in emergencies

submitted in 2008 by his predecessor (A/HRC/8/10) in order to identify gaps and remaining challenges in ensuring the right to education in emergency situations.

57. In the 2008 report, emergencies were defined as any crisis situations due to natural disasters, or to armed conflict, which may be international (including military occupation) or internal, as defined in international humanitarian law, or post-conflict situations. It was pointed out in the report that, besides being a widely recognized State obligation, ensuring adequate education was indispensable for preventing emergencies and ensuring success in peacebuilding and recovery efforts. It was underlined, however, that education was frequently found to be interrupted, delayed or even denied during emergencies and in the reconstruction process. In the report a number of recommendations were presented to States and intergovernmental and non-governmental organizations for better protecting education and ensuring its inclusion as an integral part of the humanitarian response to conflicts and natural disasters.

58. The current update is divided into six sections reflecting the content and core recommendations of resolution 64/290. Each section provides an indication of remaining challenges in the promotion of education in emergencies, and progress made in the past three years. The first section focuses on the recommendation for increasing political and financial support to education in emergencies. The second section addresses the recommendation to better protect schools from attacks and to ensure accountability. The third section addresses the recommendation to better prepare education systems for situations of natural disaster. The fourth section addresses the recommendation that attention be given to the specific needs of girls and other marginalized groups. The fifth section focuses on the recommendation to ensure quality education in emergencies. The sixth section is dedicated to the need for improving the collection of data on education in emergencies.

59. The preparation of the present update benefited from an extensive submission prepared through a collaborative consultative process led by a group of international and non-governmental organizations with expertise on education in emergencies.[37] The Special Rapporteur expresses his gratitude to all those who compiled or shared information for the preparation of the update.

A. Ensuring political and financial support to education in emergencies

60. Millions of persons continue to be deprived of their right to education in emergencies. Enhanced political attention and sustainable financial support are essential to safeguard this fundamental right. Lack of sufficient attention to education in emergencies continues to affect prospects for achieving both the Millennium Development Goals and the Education for All (EFA) goals. The *EFA Global Monitoring Report, 2011* underlines that around 28 million children of primary school age in conflict-affected countries are estimated to be currently out of school. This represents 42 per cent of the total number of children in the world who

[37] Education Above All, the Inter-Agency Network for Education in Emergencies, the Right to Education Project/ActionAid International, Save the Children International and the United Nations Children's Fund co-signed the submission.

are out of school.[38] Education is also at risk from natural and man-made disasters: an estimated 875 million schoolchildren live in high seismic risk zones and hundreds of millions more face regular flood, landslide, extreme wind and fire hazards, as well as slow onset disasters.[39]

61. General Assembly resolution 64/290 reflects States' recognition of the urgency of ensuring the realization of the right to education as an integral element of humanitarian assistance and response. Debate and research efforts within the United Nations system are helping to unveil what has been called a "hidden crisis" by the *EFA Global Monitoring Report*. Thematic days of discussion focused on the topic were conducted by the Committee on the Rights of the Child in 2008 and the General Assembly in 2009.

62. Increased and more coordinated attention to education among the stakeholders providing humanitarian assistance remains a key concern. The recent partnership between The Sphere Project and the Inter-Agency Network for Education in Emergencies (INEE) in preparing the companionship agreement guiding the integration of quality education in humanitarian response represents an important step in the promotion of more coherent and dedicated attention to education within the humanitarian community. Traditionally excluded from humanitarian priorities, the restoration of access to education continues to be cited as a priority by families and young people affected by emergencies.[40] Responding to the needs identified by communities affected is an essential component of humanitarian responses, and central to the implementation of the right to education.

63. Despite the increased recognition of the importance of education in emergencies by the international community and by communities affected by emergencies, funding remains extremely limited. Only a few donor agencies have explicitly included education as part of their humanitarian policies.[41] The *EFA Global Monitoring Report, 2011* underlined that in 2009, the share of humanitarian aid dedicated to education in conflict-related emergencies represented merely 2 per cent of total humanitarian aid.[42] It concluded:

> Education is the poor neighbour of a humanitarian aid system that is underfinanced, unpredictable and governed by short-termism. It suffers from a double disadvantage: education accounts for a small share of humanitarian appeals, and an even smaller share of the appeals that get funded.[43]

64. Evaluations indicate that some particularly fragile countries requiring education funding are left behind, with donors clearly prioritizing countries linked with their security priorities: official development assistance to fragile States is

[38] UNESCO, *EFA Global Monitoring Report, 2011*, p. 15.

[39] International Strategy for Disaster Reduction, Inter-Agency Network for Education in Emergencies and World Bank, *Guidance Notes on Safer School Construction* (New York, INEE; Washington, World Bank Global Facility for Disaster Reduction and Recovery, 2009).

[40] INEE, *INEE Reference Guide on External Education Financing* (New York, 2010).

[41] Until 2010, Canada, Denmark, Japan, Norway and Sweden included education in their humanitarian aid policies. In 2011, donor agencies in Australia (AusAID) and the United States of America (USAID) reflected education in emergency situations and conflict-affected countries, respectively, in their education strategies. See Save the Children, "Making it happen: financing education in countries affected by conflict and emergencies", 2011.

[42] UNESCO, *EFA Global Monitoring Report, 2011*, p. 204.

[43] Ibid., p. 19.

highly concentrated, with 51 per cent of 2008 official development assistance for 43 fragile States benefiting just six countries, which account for only 23 per cent of the population of the total number of fragile States.[44]

65. The volatility of support is another cause of concern. As already indicated, the sustainability of financial support is crucial for the adequate functioning of education systems. It can only be ensured through continued financial support enabling programmes to continue their course uninterrupted. Important opportunities are missed in post-emergency situations because of the lack of sustainable support and funding in the transition from a humanitarian response to a development framework. The need for further investment in national planning and information systems in recipient countries is also underlined in those contexts.[45]

66. The Education For All — Fast Track Initiative is working to increase its support to fragile States, but so far has lacked the capacity to deliver financing in acute emergency settings.[46] In addition to bilateral support, a number of additional financing modalities exist to finance education in emergencies, but these are still clearly insufficient.

67. The Special Rapporteur underlines that emergencies do not relieve States from their obligation to take all appropriate measures to ensure the realization of the right to education of all persons in their territories, including non-nationals, refugees or internally displaced groups. Ensuring financial support for primary education in order to guarantee that it continues to be available during emergencies, making secondary education available without discrimination and promoting access to higher education on the basis of capacity are nothing more than the fulfilment of a human rights obligation.

68. Given the fragility of some States affected by emergencies, and the central role of international assistance and cooperation in that context, it is important to recall that the obligation to provide international assistance is established in human rights law.[47] It is also reflected in numerous international declarations, including the Dakar Framework of Action on Education for All, adopted by the World Education Forum in 2000. Moreover, as noted above, States requiring assistance are also obliged to seek and manage external assistance in accordance with human rights principles.

[44] Organization for Economic Cooperation and Development (OECD)-Development Cooperation Directorate (DAC) factsheet, "Ensuring fragile States are not left behind", Paris, December 2010.

[45] UNESCO, *EFA Global Monitoring Report, 2011*, p. 227.

[46] Meeting of the Education for All Fast Track Initiative Board of Directors, 2011.

[47] See Articles 55 and 56 of the Charter of the United Nations, articles 2.1 and 11 of the International Covenant on Economic, Social and Cultural Rights, article 4 of the Convention on the Rights of the Child and article 32 of the Convention on the Rights of Persons with Disabilities.

B. Protecting education from attack

69. Attacks against schools and institutions of higher education violate human rights and humanitarian law.[48] Nonetheless, as recently reported by the Secretary-General, attacks against schools are a significant concern and a growing trend.[49] Insecurity still prevails in many education institutions located in conflict zones, with long-lasting consequences for education systems and students.

70. Studies indicate a continued increase in the reported number of attacks on education in situations of conflict and widespread violence over the past three years.[50] Such episodes include harming or killing students and school personnel, damaging or destroying education facilities and ultimately preventing thousands of students from attending school or university owing to closures. The Institute of International Education's Scholar Rescue Fund[51] reports that applications from threatened scholars doubled during the period 2008-2011 as compared to the previous period. In certain situations, the use of schools by armed elements has compromised the civilian nature of schools and put students and teachers at risk.[52]

71. Despite deficiencies in monitoring mechanisms, increased attention on the part of the international community to situations of attack against education in emergencies can be noted. In 2010, the Global Coalition to Protect Education from Attack was established by international and non-governmental organizations to jointly promote efforts to prevent, respond to and monitor attacks against education. The Secretary-General included information on such situations in his most recent report on children in armed conflict.[53] The same was done by the Special Representative of the Secretary-General for Children and Armed Conflict, who recalled the importance of protecting schools against attacks and underlined that "enhancing accountability mechanisms for such crimes is key to ensuring that schools remain safe havens and zones of peace".[54]

72. The Special Rapporteur considers that enhancing the capacity of mechanisms monitoring situations where education systems are targeted by those involved in armed conflict is essential to end invisibility and impunity. In that regard, he welcomes the recent adoption by the Security Council of resolution 1998 (2011), in which, expressing deep concern about attacks against schools, the Council requested the Secretary-General to include in the annexes to his reports on children and armed

[48] The right to education during conflict is protected by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949. Under international humanitarian law, schools and educational institutions are civilian objects that are protected from deliberate attack unless and only for such time as they are being used by belligerent forces for a military purpose. See article 8 of the Rome Statute of the International Criminal Court.

[49] A/65/820-S/2011/250, para. 211.

[50] N. Boothby, A. Ager and R. Quinn, "Feasibility study for a global monitoring system for attacks on education: definitions and typology", CPC Learning Network, Doha; Education Above All, New York, 2011.

[51] The Institute of International Education (IIE), an independent non-profit organization, has participated in the rescue of persecuted scholars since its founding in 1919. In 2002, IIE launched the Scholar Rescue Fund (SRF) as a formalized response to this ongoing international dilemma. SRF cooperates closely with the Scholars at Risk Network, the Council for Assisting Refugee Academics and similar organizations.

[52] A/65/820-S/2011/250, para. 211.

[53] Ibid.

[54] A/64/254, para. 25.

conflict information about recurrent attacks on schools and recurrent attacks or threats of attacks against protected persons in relation to schools. The Security Council's monitoring and reporting mechanism has already played an important role in the identification of grave violations committed against children in armed conflict, and continuing and growing attention to attacks against schools will be vital to enhance protection of the right to education. To further ensure accountability, the capacity of domestic and international justice systems must also be enhanced, allowing for the prosecution of perpetrators, including non-State actors.

73. Beyond ensuring accountability for attacks against schools, targeted efforts are also required to prevent the occurrence of attacks against schools and other education institutions and to prepare them for situations of insecurity in order to minimize the damage armed conflict may cause. Finally, dedicated efforts are required to assist victims in their recovery and to ensure appropriate individual and collective reparation for these education-related violations.

C. Preparing education systems to cope with natural disasters

74. The increasing number of natural disasters must not be ignored by those in charge of education systems. Schools not only play a crucial role in preparing communities to be more resilient in such situations, but also need to be adequately prepared to minimize the harm that natural disasters may eventually cause to their own functioning. Thus, specific attention to the education sector is required in the development of overall disaster risk reduction strategies. At the same time, schools must develop and adopt systematic safety and security measures adapted to the specific circumstances they face.

75. Schools are often not constructed or maintained to be disaster resilient. An extensive consultation with children around the globe resulted in the recent preparation of a children's charter for disaster risk reduction,[55] which highlights the need for schools to be safe and education not to be interrupted. INEE coordinated the preparation of guidance notes on the necessary steps to ensure the construction of safer schools and the adaptation of existing ones.[56] A major effort is needed to build technical capacity for, and ensure the adoption of, safer standards for education infrastructure to avoid tragedies where seismic or other hazards take the lives of large numbers of children in unsafe schools.

76. Attention is being paid also to the use of schools as a platform to increase the preparation of learners and education staff for disasters and their aftermath. Several countries have included disaster risk reduction elements in their school curriculum,[57] others have considered making disaster risk reduction and climate change adaptation a national education priority.[58]

[55] Children's Charter — an action plan for disaster risk reduction by children for children, available from www.childrenmachangingclimate.org.

[56] Global Facility for Disaster Reduction and Recovery, *Guidance Notes on Safer School Construction*, 2009.

[57] Global Platform for Disaster Risk Reduction, "Aligning regional and global disaster risk reduction agendas: Summary of key regional political commitments & disaster risk reduction priorities", 2011, p. 20.

[58] Ibid., p. 25.

77. The Special Rapporteur underlines that investing in preventive efforts through education is crucial to protect schools and the communities they serve from the impact of natural disasters. Therefore, education systems must be actively engaged in the development and implementation of risk management strategies. Through their regular activities, schools must also contribute to establishing a culture of prevention and preparedness among students, staff and the communities to which they belong. Considering that the risks and needs of communities vary greatly, even within the same region, it is important to ensure that risk management strategies are prepared through meaningful participatory processes involving the communities where schools are located.

D. Ensuring attention to girls and marginalized groups

78. The failure of Governments to tackle persistent inequalities based on income, gender, location, ethnicity and language is one of the reasons for the limited progress in the realization of the Education for All goals[59] as well as the Millennium Development Goals. Obstacles to schooling that are already present during periods of normality have their impact obviously magnified in emergency contexts. The costs of schooling can greatly increase and commuting between school and home often becomes very difficult and insecure, further excluding those living in poverty or more vulnerable to violence. In this sense, targeted initiatives identifying marginalized groups and addressing their specific needs are necessary to avoid widening inequalities in education.

79. Efforts to ensure gender parity in education are particularly relevant in this context. Attention has been drawn to the pervasive harm of sexual violence during conflict, which directly and indirectly affects female teachers and students.[60] Insecurity on the way to and from and within schools or colleges appears as a central element in the exclusion of girls from the education system. The lack of separate sanitary facilities in emergency schools can also constitute a major barrier to girls' education.

80. Despite the obvious resource constraints experienced in emergencies, neglecting the impact of discrimination and structural inequalities in education while planning, implementing and evaluating education policies in these situations can lead to further marginalization and in some cases contribute to a recurrence of conflict.

81. Refugees and internally displaced persons continue to face great obstacles when seeking education outside their communities of origin. Data collected by the Office of the United Nations High Commissioner for Refugees within official camps indicated limited and uneven access to education across camps; the overall primary school participation rate of refugee children in camps was 69 per cent and at the secondary level only 30 per cent.[61] Several countries maintain administrative barriers to the enrolment of both refugee and internally displaced children, despite human rights obligations to provide education without discrimination of any kind to

[59] UNESCO, *EFA Global Monitoring Report* 2009, *Summary*, *Overcoming Inequality: Why Governance Matters*, pp. 4, 7 and 39.

[60] UNESCO, *EFA Global Monitoring Report 2011*, p. 190.

[61] Dryden-Peterson, S., "Conflict, education and displacement", in *Conflict & Education: An Interdisciplinary Journal*, Toronto, 2011.

all children living in their territories[62] and the relevant provisions of the Convention relating to the Status of Refugees.[63] Short-term financing of projects in situations of prolonged displacement threatens the education, and progression, of many thousands of refugee and internally displaced children;[64] gaps in the financing of education in such situations must be addressed as a matter of priority because of the long-lasting impact of the denial of education to these populations.

82. The Special Rapporteur already underlined in his first report to the Human Rights Council (A/HRC/17/29) that equality of opportunity in education permeates most human rights treaties. Human rights treaties establish the duty to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis, and to provide primary education for all.

E. Ensuring quality education at all levels

83. Enrolment in school does not alone ensure the fulfilment of the right to education if, for example, the quality of the education provided does not correspond to adequate standards. Resource constraints faced in periods of emergency do not justify overlooking basic requirements to ensure quality education, such as the presence of qualified teachers, the availability of adequate educational materials, adequate real teaching time and improved classroom environments.

84. States, international organizations and civil society continue to contribute guidance to improve quality education in emergencies through materials prepared by INEE. A consultative process involving stakeholders concerned with education in emergencies all over the world led to an updated version of the *INEE Minimum Standards for Education: Preparedness, Response, Recovery* providing important policy guidance on the necessary steps to ensure quality education. The recently released *INEE Guidance Notes on Teaching and Learning* provide more specific pedagogical guidance based on the accumulated experience of educators working in emergency situations.

85. As discussed above, the inadequate and short-term funding of emergency and transitional education programmes deeply affect the possibilities of addressing serious deficiencies that result in very low levels of quality in education. Moreover, the overall tendency of humanitarian work to focus solely on primary education limits investment in early childhood care and development, and in secondary and higher education. This bias greatly limits prospects of progression for students and increases the challenges for training teachers.

86. The *EFA Global Monitoring Report 2011* describes a number of issues critical to ensuring quality education for students affected by or at risk of conflict. They include ensuring that children can learn in their mother tongue, particularly at the early stages, rethinking the teaching of history and religion so it illustrates different perspectives on conflict-sensitive issues, and promoting non-violent school environments.

[62] Convention on the Rights of the Child, articles 2 and 28.

[63] Refugee children should be accorded the same treatment as is accorded to nationals with respect to elementary education (art. 22, para. 1) and treatment no less favourable than that accorded to foreigners with respect to education other than elementary education (art. 22, para. 2).

[64] UNESCO, *EFA Global Monitoring Report 2011, Summary*, p. 31.

87. The effective teaching of literacy, numeracy and life skills, such as health preparedness and conflict resolution, is crucial to enhancing resilience during periods of emergency. School staff must be given adequate incentives, and have their capacity enhanced, to give appropriate attention to the psychosocial needs of students, using resources and making schedule arrangements that allow for recreational and expressive activities, as well as referring severely affected students for additional support.

88. The provision of learning achievement certification is another concern related to the quality of education in emergency contexts, in particular for students in refugee schools. Specific strategies are required to ensure that, even in times of crisis, students have their achievements adequately monitored, documented and recognized.

F. Collecting information on education in emergencies

89. Limitations in data collection in emergency situations continue to affect humanitarian efforts as a whole. Lack of capacity to accurately assess education needs limits the possibilities for accurately designing and evaluating education initiatives in emergency contexts. As already mentioned, poor monitoring further results in invisibility and consequent impunity in situations where schools are directly targeted by violence.

90. The *EFA Global Monitoring Report 2011* pointed to serious limitations in data collection in conflict situations: "assessments of need for communities caught up in conflict are at best haphazard, even taking into account the inevitable constraints associated with conducting surveys in conflict affected areas".[65] It also underlined that donors' assessments tend to underestimate needs in the education sector as their proposals are often tailored to meet low expectations of donor funding.[66] Limited attention is paid to needs assessment for qualitative aspects of education, such as textbook supply, hours of study and in-service teacher training. Human resources and infrastructure requirements for secondary education tend also to be completely ignored.

91. Collecting information during emergencies requires specific strategies to overcome the various obstacles faced in such circumstances. These obstacles may include difficult logistics, physical insecurity, the political and ethical implications of activities in rapidly changing environments, and the technical challenges of working with mobile populations and populations with unusual demographic compositions.[67]

92. The Global Education Cluster developed a *Joint Education Needs Assessment Toolkit* in 2010, as well as a *Short Guide for Rapid Needs Assessments* to provide guidance on data collection in emergency situations. The need for further improving monitoring capacities through the definition of a core set of indicators, including estimated numbers of children and youth to be reached, age and gender profiles, patterns of displacement, education materials, teacher and infrastructure

[65] Ibid., p. 216.

[66] Ibid., p. 206.

[67] Jennifer Schlecht and Sara Casey, "Challenges of collecting baseline data in emergency settings", Reproductive Health Access, Information and Services in Emergencies, 2008.

requirements needed to guide the estimation of financing requirements has been underlined.[68]

G. Conclusion and recommendations

93. **As discussed in the previous report on education in emergency situations (A/HRC/8/10), severely limited access to education continues to be a reality for most of the communities affected by emergencies. Despite increased attention by the international community, crucial problems persist: funding for humanitarian activities continues to ignore requirements to ensure education; schools continue to be victimized by direct and indirect violence; and preventive efforts are still timid vis-à-vis an increased impact of natural disasters. To reverse the current trend, States and other entities providing and channelling humanitarian and transitional assistance must pay enhanced attention to education in emergencies. Providing education and ensuring that education is protected during periods of emergency is not a choice, but an obligation.**

94. **In this context, the Special Rapporteur submits the following recommendations:**

(a) Ensuring adequate funding for education in situations of emergency

95. **States must urgently increase their national, bilateral and multilateral funding commitments for education as a pillar of humanitarian and transitional response. Explicit policy commitments must be made to ensure adequate and sustainable domestic and international support for education in situations of emergency, as well as in situations of fragility and protracted crisis. Such commitments must follow through to the final stages of recovery, including in development frameworks. Recipient countries must comply with human rights while seeking and managing international assistance.**

(b) Enhancing the protection of schools from attacks

96. **States must ensure systematic monitoring, documenting and reporting of violations of international human rights and humanitarian law committed against members of education communities and education institutions and settings. The recent adoption by the Security Council of resolution 1998 (2011) must be followed by enhanced attention to the situation of education in future efforts for monitoring violations of child rights during armed conflict. Domestic, regional and international accountability mechanisms, including those of the military, should be fully cognizant of, as well as systematically address, the obligations of State and non-State actors with respect to the right to education and other legal protections guaranteed to members of education communities and institutions. Specific efforts are required to strengthen the capacity of education providers to prevent and respond to attacks.**

[68] UNESCO, *EFA Global Monitoring Report 2011*, p. 217.

(c) Strengthening safety and disaster risk reduction

97. **States must ensure that disaster risk and safety considerations are factored into the planning, design, construction and reconstruction of educational facilities. Disaster risk reduction and preparedness notions should be embedded in education policies and curricula. Participatory processes involving students and their communities must be used to ensure local hazard assessments and preparedness.**

(d) Paying attention to the exclusion of girls and marginalized groups

98. **States must take specific measure to guarantee the education of girls and marginalized groups in situations of emergency. Specific efforts are required to eliminate persistent or emerging patterns of discrimination and to remove physical, financial, cultural and linguistic barriers that contribute to furtheriog inequalities during periods of emergency.**

(e) Ensuring quality education

99. **Those in charge of the provision of education in emergencies must consider the requirements for meeting quality educational standards. Dedicated attention must be paid to improving school curricula, promoting human rights education and addressing the psychosocial needs of students and teachers.**

(f) Developing a common framework for the assessment of education needs in emergencies

100. **Further investments are required to ensure systematic data collection on the situation of education in emergencies. States and international and non-governmental organizations providing support to education in emergencies should work on the development of a common framework for the assessment and reporting of met and unmet education needs in contexts of emergency. Such a framework must take into consideration human rights obligations regarding the right to education.**